104TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
104–831

OMNIBUS CIVIL SERVICE REFORM ACT OF 1996

SEPTEMBER 24, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3841]

[Including cost estimate of the Congressional Budget Office]5

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 3841) to amend the civil service laws of the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Omnibus Civil Service Reform Act of 1996".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DEMONSTRATION PROJECTS

Sec. 101. Demonstration projects.

TITLE II—PERFORMANCE MANAGEMENT ENHANCEMENT

Sec. 201. Increased weight given to performance for order-of-retention purposes in a reduction in force.
Sec. 202. No appeal of denial of periodic step-increases.
Sec. 203. Performance appraisals.
Sec. 204. Amendments to incentive awards authority.
Sec. 205. Due process rights of managers under negotiated grievance procedures.
Sec. 206. Collection and reporting of training information.

TITLE III—ENHANCEMENT OF THRIFT SAVINGS PLAN AND CERTAIN OTHER BENEFITS

Subtitle A—Additional Investment Funds for the Thrift Savings Plan

Sec. 301. Short title.
Sec. 302. Additional investment funds for the Thrift Savings Plan.
Sec. 303. Acknowledgement of investment risk.
Sec. 304. Effective date.

Subtitle B—Thrift Savings Account Liquidity

Sec. 311. Short title.
Sec. 312. Notice to spouses for in-service withdrawals; de minimus accounts; Civil Service Retirement System participants.
Sec. 313. In-service withdrawals; withdrawal elections, Federal Employees' Retirement System participants.
Sec. 314. Survivor annuities for former spouses; notice to Federal Employees' Retirement System spouses for in-service withdrawals.
Sec. 315. De minimus accounts relating to the judiciary.
Sec. 316. Definition of basic pay.
Sec. 317. Eligible rollover distributions.
Sec. 318. Effective date.

Subtitle C—Other Provisions Relating to the Thrift Savings Plan

Sec. 321. Percentage limitations on contributions.
Sec. 322. Loans under the Thrift Savings Plan for furloughed employees.
Sec. 323. Immediate participation in the Thrift Savings Plan.

Subtitle D—Resumption of Certain Survivor Annuities That Terminated by Reason of Marriage

Sec. 331. Resumption of certain survivor annuities that terminated by reason of marriage.

Subtitle E—Life Insurance Benefits

Sec. 341. Domestic relations orders.
Sec. 342. Exception from provisions requiring reduction in additional optional life insurance.

TITLE IV—REORGANIZATION FLEXIBILITY

Sec. 401. Voluntary reductions in force.
Sec. 402. Nonreimbursable details to Federal agencies before a reduction in force.

TITLE V—SOFT-LANDING PROVISIONS

Sec. 501. Temporary continuation of Federal employees' life insurance.
Sec. 502. Continued eligibility for health insurance.
Sec. 503. Priority placement programs for Federal employees affected by a reduction in force.
Sec. 504. Job placement and counseling services.
Sec. 505. Education and retraining incentives.

TITLE VI—MISCELLANEOUS

Sec. 601. Reimbursements relating to professional liability insurance.
Sec. 602. Employment rights following conversion to contract.
Sec. 603. Debarment of health care providers found to have engaged in fraudulent practices.
Sec. 604. Conversion of certain excepted service positions in the United States Fire Administration to competitive service positions.
Sec. 605. Eligibility for certain survivor annuity benefits.
Sec. 606. Amendment to Public Law 104–134.
Sec. 607. Miscellaneous amendments relating to the health benefits program for Federal employees.
Sec. 608. Pay for certain positions formerly classified at GS–18.
Sec. 609. Repeal of section 1307 of title 5 of the United States Code.
Sec. 610. Mandatory internal alternative dispute resolution procedures.

TITLE I—DEMONSTRATION PROJECTS

SEC. 101. DEMONSTRATION PROJECTS.

(a) DEFINITIONS.—Paragraph (1) of section 4701(a) of title 5, United States Code, is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(b) PRE-IMPLEMENTATION PROCEDURES.—Subsection (b) of section 4703 of title 5, United States Code, is amended to read as follows:

"(b) Before an agency or the Office may conduct or enter into any agreement or contract to conduct a demonstration project, the Office—

"(1) shall develop or approve a plan for such project which identifies—

"(A) the purposes of the project;

"(B) the methodology;

"(C) the duration; and

"(D) the methodology and criteria for evaluation;

"(2) shall publish the plan in the Federal Register;

"(3) may solicit comments from the public and interested parties in such manner as the Office considers appropriate;

"(4) shall obtain approval from each agency involved of the final version of the plan; and

"(5) shall provide notification of the proposed project, at least 30 days in advance of the date any project proposed under this section is to take effect—

"(A) to employees who are likely to be affected by the project; and

"(B) to each House of the Congress.".

(c) NONWAIVABLE PROVISIONS.—Section 4703(c) of title 5, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) any provision of subchapter V of chapter 63 or subpart G of part III of this title;"; and

(2) by striking paragraph (3) and inserting the following:

"(3) any provision of chapter 15 or subchapter II or III of chapter 73 of this title;".

(d) LIMITATIONS.—Subsection (d) of section 4703 of title 5, United States Code, is amended to read as follows:

"(d)(1) Each demonstration project shall terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue for a maximum of 2 years beyond the date to the extent necessary to validate the results of the project.

"(2)(A) Not more than 15 active demonstration projects may be in effect at any time, and of the projects in effect at any time, not more than 5 may involve 5,000 or more individuals each.

"(B) Individuals in a control group necessary to validate the results of a project shall not, for purposes of any determination under subparagraph (A), be considered to be involved in such project.".

(e) EVALUATIONS.—Subsection (h) of section 4703 of title 5, United States Code, is amended by adding at the end the following: "The Office may, with respect to a demonstration project conducted by another agency, require that the preceding sentence be carried out by such other agency.".

(f) PROVISIONS FOR TERMINATION OF PROJECT OR MAKING IT PERMANENT.—Section 4703 of title 5, United States Code, is amended—

(1) in subsection (i) by inserting "by the Office" after "undertaken"; and

(2) by adding at the end the following:

"(j)(1) If the Office determines that termination of a demonstration project (whether under subsection (e) or otherwise) would result in the inequitable treatment of employees who participated in the project, the Office shall take such corrective action as is within its authority. If the Office determines that legislation is necessary to correct an inequity, it shall submit an appropriate legislative proposal to both Houses of Congress.

"(2) If the Office determines that a demonstration project should be made permanent, it shall submit an appropriate legislative proposal to both Houses of Congress.".

TITLE II—PERFORMANCE MANAGEMENT ENHANCEMENT

SEC. 201. INCREASED WEIGHT GIVEN TO PERFORMANCE FOR ORDER-OF-RETENTION PURPOSES IN A REDUCTION IN FORCE.

(a) IN GENERAL.—Section 3502 of title 5, United States Code, is amended—

(1) in subsection (a)(4) by striking "ratings." and inserting "ratings, in conformance with the requirements of subsection (g).''; and

(2) by adding at the end the following:

"(g)(1) The regulations prescribed to carry out subsection (a)(4) shall be the regulations in effect, as of January 1, 1996, under section 351.504 of title 5 of the Code of Federal Regulations, except as otherwise provided in this subsection.

"(2) For purposes of this subsection—

"(A) subsections (b)(4) and (e) of such section 351.504 shall be disregarded;

"(B) subsection (d) of such section 351.504 shall be considered to read as follows:

"'(d)(1) The additional service credit an employee receives for performance under this subpart shall be expressed in additional years of service and shall consist of the sum of the employee's 3 most recent (actual and/or assumed) annual performance ratings received during the 4-year period prior to the date of issuance of reduction-in-force notices or the 4-year period prior to the agency-established cutoff date (as appropriate), computed in accordance with paragraph (2) or (3) (as appropriate).

"'(2) Except as provided in paragraph (3), an employee shall receive—

"'(A) 5 additional years of service for each performance rating of fully successful (Level 3) or equivalent;

"'(B) 7 additional years of service for each performance rating of exceeds fully successful (Level 4) or equivalent; and

"'(C) 10 additional years of service for each performance rating of outstanding (Level 5) or equivalent.

"'(3)(A) If the employing agency uses a rating system having only 1 rating to denote performance which is fully successful or better, then an employee under such system shall receive 5 additional years of service for each such rating.

"'(B) If the employing agency uses a rating system having only 2 ratings to denote performance which is fully successful or better, then an employee under such system shall receive—

"'(i) 5 additional years of service for each performance rating at the lower of those 2 ratings; and

"'(ii) 7 additional years of service for each performance rating at the higher of those 2 ratings.

"'(C) If the employing agency uses a rating system having more than 3 ratings to denote performance which is fully successful or better, then an employee under such system shall receive—

"'(i) 5 additional years of service for each performance rating at the lowest of those ratings;

"'(ii) 7 additional years of service for each performance rating at the next rating above the rating referred to in clause (i); and

"'(iii) 10 additional years of service for each performance rating above the rating referred to in clause (ii).

"'(D) For purposes of this paragraph, a rating shall not be considered to denote performance which is fully successful or better unless, in order to receive such rating, such performance must satisfy all requirements for a fully successful rating (Level 3) or equivalent, as established under part 430 of this chapter (as in effect as of January 1, 1996).'; and

"(C) subsection (c) of such section shall be considered to read as follows:

"'(c)(1) Service credit for employees who do not have 3 actual annual performance ratings of record received during the 4-year period prior to the date of issuance of reduction-in-force notices, or the 4-year period prior to the agency-established cutoff date for ratings permitted in subsection (b)(2) of this section, shall be determined in accordance with paragraph (2).

"'(2) An employee who has not received 1 or more of the 3 annual performance ratings of record required under this section shall—

"'(A) receive credit for performance on the basis of the rating or ratings actually received (if any); and

"'(B) for each performance rating not actually received, be given credit for 5 additional years of service.'.".

(b) EQUITABLE TREATMENT OF EMPLOYEES.—For purposes of determining the order of retention of employees in a reduction in force taking effect on or after October 1, 1999, the Office of Personnel Management shall prescribe such regulations as may be necessary to ensure that—

(1) in the case of any agency having more than 1 performance evaluation system, employees subject to different systems are treated equitably; and

(2) with respect to employees in the same competitive area who have been subject to different performance evaluation systems with dissimilar summary levels, no such employee shall suffer as a result of having been covered by more than 1 such system.

(c) REPORT.—Not later than 270 days after the date of the enactment of this Act, the General Accounting Office shall submit to the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate a report analyzing and assessing the following:

(1) Based on performance-ratings statistics in the executive branch of the Government over the past 15 years, the correlation (if any) between employees' ratings of record and the following:

(A) Promotions.
(B) Awards.
(C) Bonuses.
(D) Quit rates.
(E) Removals.
(F) Disciplinary actions (other than removals).
(G) The filing of grievances, complaints, and charges of unfair labor practices.
(H) Appeals of adverse actions.

(2) The impact of performance ratings on retention during reductions in force over the past 5 years.

(3) Whether "pass/fail" performance systems are compatible with the statutory requirement that efficiency or performance ratings be given due effect during reductions in force.

(4) The respective numbers of Federal agencies, organizational units, and Federal employees that are covered by the different performance evaluation systems.

(5) The potential impact of this section on employees in different performance evaluation systems.

(6) Whether there are significant differences in the distribution of ratings among or within agencies and, if so, the reasons therefor.

Based on the findings of the General Accounting Office, the report shall include recommendations to improve the effectiveness of Federal performance evaluation systems.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to reductions in force taking effect on or after October 1, 1999.

SEC. 202. NO APPEAL OF DENIAL OF PERIODIC STEP-INCREASES.

(a) IN GENERAL.—Section 5335(c) of title 5, United States Code, is amended—

(1) by striking the second sentence;

(2) in the third sentence by striking "or appeal"; and

(3) in the last sentence by striking "and the entitlement of the employee to appeal to the Board do not apply" and inserting "does not apply".

(b) PERFORMANCE RATINGS.—Section 5335 of title 5, United States Code, as amended by subsection (a), is further amended—

(1) in subsection (a)(B) by striking "work of the employee is of an acceptable level of competence" and inserting "performance of the employee is at least fully successful";

(2) in subsection (c)—

(A) in the first sentence by striking "work of an employee is not of an acceptable level of competence," and inserting "performance of an employee is not at least fully successful,"; and

(B) in the last sentence by striking "acceptable level of competence" and inserting "fully successful work performance"; and

(3) by adding at the end the following:

"(g) For purposes of this section, the term 'fully successful' denotes work performance that satisfies the requirements of section 351.504(d)(3)(D) of title 5 of the Code of Federal Regulations (as deemed to be amended by section 3502(g)(2)(B)).".

SEC. 203. PERFORMANCE APPRAISALS.

(a) IN GENERAL.—Section 4302 of title 5, United States Code, is amended—

(1) in subsection (b) by striking paragraphs (5) and (6) and inserting the following:

"(5) assisting employees in improving unacceptable performance, except in circumstances described in subsection (c); and

"(6) reassigning, reducing in grade, removing, or taking other appropriate action against employees whose performance is unacceptable."; and

(2) by adding at the end the following:

"(c) Upon notification of unacceptable performance, an employee shall be afforded an opportunity to demonstrate acceptable performance before a reduction in grade or removal may be proposed under section 4303 based on such performance, except that an employee so afforded such an opportunity shall not be afforded any further opportunity to demonstrate acceptable performance if the employee's performance again is determined to be at an unacceptable level.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), this section and the amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply in the case of any proposed action as to which the employee receives advance written notice, in accordance with section 4303(b)(1)(A) of title 5, United States Code, before the effective date of this section.

SEC. 204. AMENDMENTS TO INCENTIVE AWARDS AUTHORITY.

Chapter 45 of title 5, United States Code, is amended—

(1) by amending section 4501 to read as follows:

"§ 4501. Definitions

"For the purpose of this subchapter—

"(1) the term 'agency' means—

"(A) an Executive agency;

"(B) the Library of Congress;

"(C) the Office of the Architect of the Capitol;

"(D) the Botanic Garden;

"(E) the Government Printing Office; and

"(F) the United States Sentencing Commission;

but does not include—

"(i) the Tennessee Valley Authority; or

"(ii) the Central Bank for Cooperatives;

"(2) the term 'employee' means an employee as defined by section 2105; and

"(3) the term 'Government' means the Government of the United States.";

(2) by amending section 4503 to read as follows:

"§ 4503. Agency awards

"(a) The head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—

"(1) by his suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs a special act or service in the public interest in connection with or related to his official employment.

"(b)(1) If the criteria under paragraph (1) or (2) of subsection (a) are met on the basis of the suggestion, invention, superior accomplishment, act, service, or other meritorious effort of a group of employees collectively, and if the circumstances so warrant (such as by reason of the infeasibility of determining the relative role or contribution assignable to each employee separately), authority under subsection (a) may be exercised—

"(A) based on the collective efforts of the group; and

"(B) with respect to each member of such group.

"(2) The amount awarded to each member of a group under this subsection—

"(A) shall be the same for all members of such group, except that such amount may be prorated to reflect differences in the period of time during which an individual was a member of the group; and

"(B) may not exceed the maximum cash award allowable under subsection (a) or (b) of section 4502, as applicable."; and

(3) in subsection (a)(1) of section 4505a by striking "at the fully successful level or higher" and inserting "higher than the fully successful level".

SEC. 205. DUE PROCESS RIGHTS OF MANAGERS UNDER NEGOTIATED GRIEVANCE PROCEDURES.

(a) IN GENERAL.—Paragraph (2) of section 7121(b) of title 5, United States Code, is amended to read as follows:

"(2) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)—

(1) shall take effect on the date of the enactment of this Act; and

(2) shall apply with respect to orders issued on or after the date of the enactment of this Act, notwithstanding the provisions of any collective bargaining agreement.

SEC. 206. COLLECTION AND REPORTING OF TRAINING INFORMATION.

(a) TRAINING WITHIN GOVERNMENT.—The Office of Personnel Management shall collect information concerning training programs, plans, and methods utilized by agencies of the Government and submit a report to the Congress on this activity on an annual basis.

(b) TRAINING OUTSIDE OF GOVERNMENT.—The Office of Personnel Management, to the extent it considers appropriate in the public interest, may collect information concerning training programs, plans, and methods utilized outside the Government. The Office, on request, may make such information available to an agency and to Congress.

TITLE III—ENHANCEMENT OF THRIFT SAVINGS PLAN AND CERTAIN OTHER BENEFITS

Subtitle A—Additional Investment Funds for the Thrift Savings Plan

SEC. 301. SHORT TITLE.

This subtitle may be cited as the "Thrift Savings Investment Funds Act of 1996".

SEC. 302. ADDITIONAL INVESTMENT FUNDS FOR THE THRIFT SAVINGS PLAN.

Section 8438 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively;

(B) by inserting after paragraph (4) the following:

"(5) the term 'International Stock Index Investment Fund' means the International Stock Index Investment Fund established under subsection (b)(1)(E);";

(C) in paragraph (8) (as redesignated by subparagraph (A) of this paragraph) by striking "and" at the end;

(D) in paragraph (9) (as redesignated by subparagraph (A) of this paragraph)—

(i) by striking "paragraph (7)(D)" each place it appears and inserting "paragraph (8)(D)"; and

(ii) by striking the period and inserting a semicolon and "and"; and

(E) by adding at the end the following:

"(10) the term 'Small Capitalization Stock Index Investment Fund' means the Small Capitalization Stock Index Investment Fund established under subsection (b)(1)(D).."; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (B) by striking "and" at the end;

(ii) in subparagraph (C) by striking the period and inserting a semicolon; and

(iii) by adding at the end the following:

"(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3); and

"(E) an International Stock Index Investment Fund as provided in paragraph (4)."; and

(B) by adding at the end the following:

"(3)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets excluding the common stocks included in the Common Stock Index Investment Fund.

"(B) The Small Capitalization Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Small Capitalization Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

"(4)(A) The Board shall select an index which is a commonly recognized index comprised of stock the aggregate market value of which is a reasonably complete representation of the international equity markets excluding the United States equity markets.

"(B) The International Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the International Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.".

SEC. 303. ACKNOWLEDGEMENT OF INVESTMENT RISK.

Section 8439(d) of title 5, United States Code, is amended by striking "Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund or the Fixed Income Investment Fund described in paragraphs (1) and (3)," and inserting "Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund, the Fixed Income Investment Fund, the International Stock Index Investment Fund, or the Small Capitalization Stock Index Investment Fund, defined in paragraphs (1), (3), (5), and (10),".

SEC. 304. EFFECTIVE DATE.

This subtitle shall take effect on the date of enactment of this Act, and the Funds established under this subtitle shall be offered for investment at the earliest practicable election period (described in section 8432(b) of title 5, United States Code) as determined by the Executive Director in regulations.

Subtitle B—Thrift Savings Account Liquidity

SEC. 311. SHORT TITLE.

This subtitle may be cited as the "Thrift Savings Plan Act of 1996".

SEC. 312. NOTICE TO SPOUSES FOR IN-SERVICE WITHDRAWALS; DE MINIMUS ACCOUNTS; CIVIL SERVICE RETIREMENT SYSTEM PARTICIPANTS.

Section 8351(b) of title 5, United States Code, is amended—

(1) in paragraph (5)—

(A) in subparagraph (B)—

(i) by striking "An election, change of election, or modification (relating to the commencement date of a deferred annuity)" and inserting "An election or change of election";

(ii) by inserting "or withdrawal" after "and a loan";

(iii) by inserting "and (h)" after "8433(g)";

(iv) by striking "the election, change of election, or modification" and inserting "the election or change of election"; and

(v) by inserting "or withdrawal" after "for such loan"; and

(B) in subparagraph (D)—

(i) by inserting "or withdrawals" after "of loans"; and

(ii) by inserting "or (h)" after "8433(g)"; and

(2) in paragraph (6)—

(A) by striking "$3,500 or less" and inserting "less than an amount that the Executive Director prescribes by regulation"; and

(B) by striking "unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b)".

SEC. 313. IN-SERVICE WITHDRAWALS; WITHDRAWAL ELECTIONS, FEDERAL EMPLOYEES' RETIREMENT SYSTEM PARTICIPANTS.

(a) IN GENERAL.—Section 8433 of title 5, United States Code, is amended—

(1) by striking subsections (b) and (c) and inserting the following:

"(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect to withdraw from the Thrift Savings Fund the balance of the employee's or Member's account as—

"(1) an annuity;

"(2) a single payment;

"(3) 2 or more substantially equal payments to be made not less frequently than annually; or

"(4) any combination of payments as provided under paragraphs (1) through (3) as the Executive Director may prescribe by regulation.

"(c)(1) In addition to the right provided under subsection (b) to withdraw the balance of the account, an employee or Member who separates from Government service and who has not made a withdrawal under subsection (h)(1)(A) may make one

withdrawal of any amount as a single payment in accordance with subsection (b)(2) from the employee's or Member's account.

"(2) An employee or Member may request that the amount withdrawn from the Thrift Savings Fund in accordance with subsection (b)(2) be transferred to an eligible retirement plan.

"(3) The Executive Director shall make each transfer elected under paragraph (2) directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

"(4) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (2) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.";

(2) in subsection (d)—

(A) in paragraph (1) by striking "Subject to paragraph (3)(A)" and inserting "Subject to paragraph (3)";

(B) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2); and

(C) in paragraph (2) (as redesignated by subparagraph (B) of this paragraph)—

(i) in subparagraph (A) by striking "(A)"; and

(ii) by striking subparagraph (B);

(3) in subsection (f)(1)—

(A) by striking "$3,500 or less" and inserting "less than an amount that the Executive Director prescribes by regulation"; and

(B) by striking "unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b), or" and inserting a comma;

(4) in subsection (f)(2)—

(A) by striking "February 1" and inserting "April 1";

(B) in subparagraph (A)—

(i) by striking "65" and inserting "70½"; and

(ii) by inserting "or" after the semicolon;

(C) by striking subparagraph (B); and

(D) by redesignating subparagraph (C) as subparagraph (B);

(5) in subsection (g)—

(A) in paragraph (1) by striking "after December 31, 1987, and"; and

(B) by striking paragraph (2) and redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and

(6) by adding after subsection (g) the following:

"(h)(1) An employee or Member may apply, before separation, to the Board for permission to withdraw an amount from the employee's or Member's account based upon—

"(A) the employee or Member having attained age 59½; or

"(B) financial hardship.

"(2) A withdrawal under paragraph (1)(A) shall be available to each eligible participant one time only.

"(3) A withdrawal under paragraph (1)(B) shall be available only for an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member under section 8432(a) of this title.

"(4) Withdrawals under paragraph (1) shall be subject to such other conditions as the Executive Director may prescribe by regulation.

"(5) A withdrawal may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.".

(b) INVALIDITY OF CERTAIN PRIOR ELECTIONS.—Any election made under section 8433(b)(2) of title 5, United States Code (as in effect before the effective date of this title), with respect to an annuity which has not commenced before the implementation date of this title as provided by regulation by the Executive Director in accordance with section 318, shall be invalid.

SEC. 314. SURVIVOR ANNUITIES FOR FORMER SPOUSES; NOTICE TO FEDERAL EMPLOYEES' RETIREMENT SYSTEM SPOUSES FOR IN-SERVICE WITHDRAWALS.

Section 8435 of title 5, United States Code, is amended—

(1) in subsection (a)(1)(A)—

(A) by striking "may make an election under subsection (b)(3) or (b)(4) of section 8433 of this title or change an election previously made under subsection (b)(1) or (b)(2) of such section" and inserting "may withdraw all or

part of a Thrift Savings Fund account under subsection (b) (2), (3), or (4) of section 8433 of this title or change a withdrawal election"; and

(B) by adding at the end "A married employee or Member (or former employee or Member) may make a withdrawal from a Thrift Savings Fund account under subsection (c)(1) of section 8433 of this title only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).";

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking "An election, change of election, or modification of the commencement date of a deferred annuity" and inserting "An election or change of election"; and

(ii) by striking "modification, or transfer" and inserting "or transfer"; and

(B) in paragraph (2) in the matter following subparagraph (B)(ii) by striking "modification,";

(3) in subsection (e)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) by inserting "or withdrawal" after "A loan";

(II) by inserting "and (h)" after "8433(g)"; and

(III) by inserting "or withdrawal" after "such loan";

(ii) in subparagraph (B) by inserting "or withdrawal" after "loan"; and

(iii) in subparagraph (C)—

(I) by inserting "or withdrawal" after "to a loan"; and

(II) by inserting "or withdrawal" after "for such loan"; and

(B) in paragraph (2)—

(i) by inserting "or withdrawal" after "loan"; and

(ii) by inserting "and (h)" after "8344(g)"; and

(4) in subsection (g)—

(A) by inserting "or withdrawals" after "loans"; and

(B) by inserting "and (h)" after "8433(g)".

SEC. 315. DE MINIMUS ACCOUNTS RELATING TO THE JUDICIARY.

(a) JUSTICES AND JUDGES.—Section 8440a(b)(7) of title 5, United States Code, is amended—

(1) by striking "$3,500 or less" and inserting "less than an amount that the Executive Director prescribes by regulation"; and

(2) by striking "unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)".

(b) BANKRUPTCY JUDGES AND MAGISTRATES.—Section 8440b(b) of title 5, United States Code, is amended—

(1) in paragraph (7) in the first sentence by inserting "of the distribution" after "equal to the amount"; and

(2) in paragraph (8)—

(A) by striking "$3,500 or less" and inserting "less than an amount that the Executive Director prescribes by regulation"; and

(B) by striking "unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b)".

(c) FEDERAL CLAIMS JUDGES.—Section 8440c(b) of title 5, United States Code, is amended—

(1) in paragraph (7) in the first sentence by inserting "of the distribution" after "equal to the amount"; and

(2) in paragraph (8)—

(A) by striking "$3,500 or less" and inserting "less than an amount that the Executive Director prescribes by regulation"; and

(B) by striking "unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)".

SEC. 316. DEFINITION OF BASIC PAY.

(a) IN GENERAL.—(1) Section 8401(4) of title 5, United States Code, is amended by striking "except as provided in subchapter III of this chapter,".

(2) Section 8431 of title 5, United States Code, is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The table of sections for chapter 84 of title 5, United States Code, is amended by repealing the item relating to section 8431.

(2) Section 5545a(h)(2)(A) of title 5, United States Code, is amended by striking "8431,".

(3) Section 616(f) of the Treasury, Postal Service, and General Government Appropriations Act, 1996 (Public Law 104–52; 109 Stat. 500; 5 U.S.C. 5343 note) is amended by striking "section 8431 of title 5, United States Code, and".

SEC. 317. ELIGIBLE ROLLOVER DISTRIBUTIONS.

Section 8432 of title 5, United States Code, is amended by adding at the end the following:

"(j)(1) For the purpose of this subsection—

"(A) the term 'eligible rollover distribution' has the meaning given such term by section 402(c)(4) of the Internal Revenue Code of 1986; and

"(B) the term 'qualified trust' has the meaning given such term by section 402(c)(8) of the Internal Revenue Code of 1986.

"(2) An employee or Member may contribute to the Thrift Savings Fund an eligible rollover distribution from a qualified trust. A contribution made under this subsection shall be made in the form described in section 401(a)(31) of the Internal Revenue Code of 1986. In the case of an eligible rollover distribution, the maximum amount transferred to the Thrift Savings Fund shall not exceed the amount which would otherwise have been included in the employee's or Member's gross income for Federal income tax purposes.

"(3) The Executive Director shall prescribe regulations to carry out this subsection.".

SEC. 318. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this Act, and withdrawals, loans, rollovers, and elections as provided under the amendments made by this subtitle shall be made at the earliest practicable date as determined by the Executive Director in regulations.

Subtitle C—Other Provisions Relating to the Thrift Savings Plan

SEC. 321. PERCENTAGE LIMITATIONS ON CONTRIBUTIONS.

(a) AMENDMENTS RELATING TO FERS.—

(1) IN GENERAL.—Subsection (a) of section 8432 of title 5, United States Code, is amended by striking "10 percent of".

(2) JUSTICES AND JUDGES.—Subsection (b) of section 8440a of title 5, United States Code, as amended by section 315(a), is further amended—

(A) by striking paragraph (2) and by redesignating paragraphs (3) through (7) as paragraphs (2) through (6), respectively; and

(B) in paragraph (6) (as so redesignated by subparagraph (A)) by striking "paragraphs (4) and (5)" and inserting "paragraphs (3) and (4)".

(3) BANKRUPTCY JUDGES AND MAGISTRATES.—Subsection (b) of section 8440b of title 5, United States Code, as amended by section 315(b), is further amended—

(A) by striking paragraph (2) and by redesignating paragraphs (3) through (8) as paragraphs (2) through (7), respectively;

(B) in paragraph (4) (as so redesignated by subparagraph (A)) by striking "paragraph (4)(A), (B), or (C)" and inserting "paragraph (3)(A), (B), or (C)"; and

(C) in paragraph (7) (as so redesignated by subparagraph (A)) by striking "Notwithstanding paragraph (4)," and inserting "Notwithstanding paragraph (3),".

(4) COURT OF FEDERAL CLAIMS JUDGES.—Subsection (b) of section 8440c of title 5, United States Code, as amended by section 315(c), is further amended—

(A) by striking paragraph (2) and by redesignating paragraphs (3) through (8) as paragraphs (2) through (7), respectively;

(B) in paragraph (4) (as so redesignated by subparagraph (A)) by striking "paragraph (4)(A) or (B)" and inserting "paragraph (3)(A) or (B)"; and

(C) in paragraph (7) (as so redesignated by subparagraph (A)) by striking "Notwithstanding paragraph (4)," and inserting "Notwithstanding paragraph (3),".

(5) JUDGES OF THE UNITED STATES COURT OF VETERANS APPEALS.—Paragraph (2) of section 8440d(b) of title 5, United States Code, is amended to read as follows:

"(2) For purposes of contributions made to the Thrift Savings Fund, basic pay does not include any retired pay paid pursuant to section 7296 of title 38.".

(b) AMENDMENTS RELATING TO CSRS.—Paragraph (2) of section 8351(b) of title 5, United States Code, is amended by striking "5 percent of".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect 6 months after the date of the enactment of this Act or such earlier date as the Executive Director may be regulation prescribe.

(2) COORDINATION WITH ELECTION PERIODS.—The Executive Director shall by regulation determine the first election period in which elections may be made consistent with the amendments made by this section.

(3) DEFINITIONS.—For purposes of this subsection—

(A) the term "election period" means a period afforded under section 8432(b) of title 5, United States Code; and

(B) the term "Executive Director" has the meaning given such term by section 8401(13) of title 5, United States Code.

SEC. 322. LOANS UNDER THE THRIFT SAVINGS PLAN FOR FURLOUGHED EMPLOYEES.

Section 8433(g) of title 5, United States Code, as amended by section 313(a)(5)(B), is further amended by adding at the end the following:

"(5) An employee who has been furloughed due to a lapse in appropriations may not be denied a loan under this subsection solely because such employee is not in a pay status.".

SEC. 323. IMMEDIATE PARTICIPATION IN THE THRIFT SAVINGS PLAN.

(a) ELIMINATION OF CERTAIN WAITING PERIODS FOR PURPOSES OF EMPLOYEE CONTRIBUTIONS.—Paragraph (4) of section 8432(b) of title 5, United States Code, is amended to read as follows:

"(4) The Executive Director shall prescribe such regulations as may be necessary to carry out the following:

"(A) Notwithstanding subparagraph (A) of paragraph (2), an employee or Member described in such subparagraph shall be afforded a reasonable opportunity to first make an election under this subsection beginning on the date of commencing service or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.

"(B) An employee or Member described in subparagraph (B) of paragraph (2) shall be afforded a reasonable opportunity to first make an election under this subsection (based on the appointment or election described in such subparagraph) beginning on the date of commencing service pursuant to such appointment or election or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.

"(C) Notwithstanding the preceding provisions of this paragraph, contributions under paragraphs (1) and (2) of subsection (c) shall not be payable with respect to any pay period before the earliest pay period for which such contributions would otherwise be allowable under this subsection if this paragraph had not been enacted.

"(D) Sections 8351(a)(2), 8440a(a)(2), 8440b(a)(2), 8440c(a)(2), and 8440d(a)(2) shall be applied in a manner consistent with the purposes of subparagraphs (A) and (B), to the extent those subparagraphs can be applied with respect thereto.

"(E) Nothing in this paragraph shall affect paragraph (3).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 8432(a) of title 5, United States Code, is amended—

(A) in the first sentence by striking "(b)(1)" and inserting "(b)"; and

(B) by amending the second sentence to read as follows: "Contributions under this subsection pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions provided in regulations prescribed by the Executive Director.".

(2) Section 8432(b)(1)(B) of such title is amended by inserting "(or any election allowable by virtue of paragraph (4))" after "subparagraph (A)".

(3) Section 8432(b)(3) of such title is amended by striking "Notwithstanding paragraph (2)(A), an" and inserting "An".

(4) Section 8432(i)(1)(B)(ii) of such title is amended by striking "either elected to terminate individual contributions to the Thrift Savings Fund within 2 months before commencing military service or".

(5) Section 8439(a)(1) of such title is amended by inserting "who makes contributions or" after "for each individual" and by striking "section 8432(c)(1)" and inserting "section 8432".

(6) Section 8439(c)(2) of such title is amended by adding at the end the following: "Nothing in this paragraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence.".

(7) Sections 8440a(a)(2) and 8440d(a)(2) of such title are amended by striking "subject to" and all that follows and inserting "subject to this chapter.".

(c) EFFECTIVE DATE.—This section shall take effect 6 months after the date of the enactment of this Act or such earlier date as the Executive Director (within the meaning of section 8401(13) of title 5, United States Code) may by regulation prescribe.

Subtitle D—Resumption of Certain Survivor Annuities That Terminated by Reason of Marriage

SEC. 331. RESUMPTION OF CERTAIN SURVIVOR ANNUITIES THAT TERMINATED BY REASON OF MARRIAGE.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8341(e) of title 5, United States Code, is amended by adding at the end the following:

"(4) If the annuity of a child under this subchapter terminates under paragraph (3)(E) because of marriage, then, if such marriage ends (whether by death of the spouse, divorce, or annulment), such annuity shall resume on the first day of the month in which the marriage ends, but only if—

"(A) any lump sum paid is returned to the Fund; and

"(B) that individual is not otherwise ineligible for such annuity.".

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8443(b) of such title is amended by adding at the end the following: "If the annuity of a child under this subchapter terminates under subparagraph (E) because of marriage, then, if such marriage ends (whether by death of the spouse, divorce, or annulment), such annuity shall resume on the first day of the month in which the marriage ends, but only if any lump sum paid is returned to the Fund, and that individual is not otherwise ineligible for such annuity.".

(c) HEALTH BENEFITS PROGRAM.—Section 8908 of title 5, United States Code, is amended by adding at the end the following:

"(d) An individual—

"(1) whose survivor annuity under section 8341(e) is terminated, and then later restored under paragraph (4) thereof, or

"(2) whose survivor annuity under section 8443(b) is terminated, and then later restored under the last sentence thereof,

may, under regulations prescribed by the Office, enroll in a health benefits plan described by section 8903 or 8903a if such individual was covered by any such plan immediately before such annuity so terminated.".

(d) APPLICABILITY.—The amendments made by this section shall apply with respect to any termination of marriage taking effect before, on, or after the date of the enactment of this Act, except that no amount shall be payable by reason of the amendments made by subsections (a) and (b), respectively, except to the extent of any amounts accruing for periods beginning on or after the first day of the first month beginning on or after the later of—

(1) the date of the enactment of this Act; or

(2) the date as of which termination of marriage takes effect.

Subtitle E—Life Insurance Benefits

SEC. 341. DOMESTIC RELATIONS ORDERS.

(a) IN GENERAL.—Section 8705 of title 5, United States Code, is amended—

(1) in subsection (a) by striking "(a) The" and inserting "(a) Except as provided in subsection (e), the"; and

(2) by adding at the end the following:

"(e)(1) Any amount which would otherwise be paid to a person determined under the order of precedence named by subsection (a) shall be paid (in whole or in part)

by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation.

"(2) For purposes of this subsection, a decree, order, or agreement referred to in paragraph (1) shall not be effective unless it is received, before the date of the covered employee's death, by the employing agency or, if the employee has separated from service, by the Office.

"(3) A designation under this subsection with respect to any person may not be changed except—

"(A) with the written consent of such person, if received as described in paragraph (2); or

"(B) by modification of the decree, order, or agreement, as the case may be, if received as described in paragraph (2).

"(4) The Office shall prescribe any regulations necessary to carry out this subsection, including regulations for the application of this subsection in the event that 2 or more decrees, orders, or agreements, are received with respect to the same amount.".

(b) DIRECTED ASSIGNMENT.—Section 8706(e) of title 5, United States Code, is amended—

(1) by striking "(e)" and inserting "(e)(1)"; and

(2) by adding at the end the following:

"(2) A court decree of divorce, annulment, or legal separation, or the terms of a court-approved property settlement agreement incidental to any court decree of divorce, annulment, or legal separation, may direct that an insured employee or former employee make an irrevocable assignment of the employee's or former employee's incidents of ownership in insurance under this chapter (if there is no previous assignment) to the person specified in the court order or court-approved property settlement agreement.".

SEC. 342. EXCEPTION FROM PROVISIONS REQUIRING REDUCTION IN ADDITIONAL OPTIONAL LIFE INSURANCE.

(a) IN GENERAL.—Subsection (c) of section 8714b of title 5, United States Code, is amended by adding at the end the following:

"(3)(A) The amount of additional optional insurance continued under paragraph (2) shall be continued, without any reduction under the last two sentences thereof, if—

"(i) at the time of retirement, there is in effect a designation under section 8705 under which the entire amount of such insurance would be paid to an individual who is permanently disabled; and

"(ii) an election under subsection (d)(3) on behalf of such individual is made in timely fashion.

"(B) Notwithstanding subparagraph (A), any reduction required under paragraph (2) shall be made if—

"(i) the additional optional insurance is not in fact paid in accordance with the designation under section 8705, as in effect at the time of retirement;

"(ii) the Office finds that adequate arrangements have not been made to ensure that the insurance provided under this section will be used only for the care and support of the individual so designated; or

"(iii) the election referred to in subparagraph (A)(ii) terminates at any time before the death of the individual who made such election.

"(C) For purposes of this paragraph, the term 'permanently disabled' shall have the meaning given such term under regulations which the Office shall prescribe based on subparagraphs (A) and (C) of section 1614(a)(3) of the Social Security Act, except that, in applying subparagraph (A) of such section for purposes of this subparagraph, 'which can be expected to last permanently' shall be substituted for 'which has lasted or can be expected to last for a continuous period of not less than twelve months'.".

(b) CONTINUED WITHHOLDINGS.—Subsection (d) of such section 8714b is amended by adding at the end the following:

"(3)(A) To be eligible for unreduced additional optional insurance under subsection (c)(3), the insured individual shall be required to elect, at such time and in such manner as the Office by regulation requires (including procedures for demonstrating compliance with the requirements of subsection (c)(3)), to have the full cost thereof continue to be withheld from the former employee's annuity or compensation, as the case may be, beginning as of when such withholdings would otherwise cease under the second sentence of paragraph (1).

"(B) An election made by an insured individual under subparagraph (A) (and withholdings pursuant thereto) shall terminate in the event that—

"(i) the insured individual—

"(I) revokes such election; or

"(II) makes any redesignation or other change in the designation under section 8705 (as in effect at the time of retirement); or

"(ii) the Office finds, upon the application of the insured individual or on its own initiative, that any of the requirements or conditions for unreduced additional optional insurance under subsection (c)(3) are, at any time, no longer met.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) ELECTION FOR CERTAIN INDIVIDUALS NOT OTHERWISE ELIGIBLE.—The Office of Personnel Management shall prescribe regulations under which an election under section 8714b(d)(3)(A) of title 5, United States Code (as amended by this section) may be made, within 1 year after the date of the enactment of this Act, by any individual not otherwise eligible to make such an election, but only if such individual—

(A) separated from service on or after the first day of the 50-month period ending on the date of enactment of this Act; and

(B) would have been so eligible had the amendments made by this section (and implementing regulations) been in effect as of the individual's separation date (or, if earlier, the last day for making such an election based on that separation).

(3) WITHHOLDINGS.—

(A) PROSPECTIVE EFFECT.—If an individual makes an election under paragraph (2), withholdings under section 8714b(d)(3)(A) of such title 5 shall thereafter be made from such individual's annuity or compensation, as the case may be.

(B) EARLIER AMOUNTS.—If, pursuant to such election, benefits are in fact paid in accordance with section 8714b(c)(3) of such title 5 upon the death of the insured individual, an appropriate reduction (computed under regulations prescribed by the Office) shall be made in such benefits to reflect the withholdings that—

(i) were not made (before the commencement of withholdings under subparagraph (A)) by reason of the cessation of withholdings under the second sentence of section 8714b(d)(1) of such title; but

(ii) would have been made had the amendments made by this section (and implementing regulations) been in effect as of the time described in paragraph (2)(B).

(4) NOTICE.—The Office shall, by publication in the Federal Register and such other methods as it considers appropriate, notify current and former Federal employees as to the enactment of this section and any benefits for which they might be eligible pursuant thereto. Included as part of such notification shall be a brief description of the procedures for making an election under paragraph (2) and any other information that the Office considers appropriate.

TITLE IV—REORGANIZATION FLEXIBILITY

SEC. 401. VOLUNTARY REDUCTIONS IN FORCE.

Section 3502(f) of title 5, United States Code, is amended to read as follows:

"(f)(1) The head of an Executive agency or military department may, in accordance with regulations prescribed by the Office of Personnel Management—

"(A) separate from service any employee who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

"(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

"(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force, except for purposes of priority placement programs and advance notice.

"(3) An employee with critical knowledge and skills (as defined by the head of the Executive agency or military department concerned) may not participate in a voluntary separation under paragraph (1)(A) if the agency or department head con-

cerned determines that such participation would impair the performance of the mission of the agency or department (as applicable).

"(4) The regulations prescribed under this section shall incorporate the authority provided in this subsection.

"(5) No authority under paragraph (1) may be exercised after September 30, 2001.".

SEC. 402. NONREIMBURSABLE DETAILS TO FEDERAL AGENCIES BEFORE A REDUCTION IN FORCE.

(a) IN GENERAL.—Section 3341 of title 5, United States Code, is amended to read as follows:

"§ 3341. Details; within Executive agencies and military departments; employees affected by reduction in force

"(a) The head of an Executive agency or military department may detail employees, except those required by law to be engaged exclusively in some specific work, among the bureaus and offices of the agency or department.

"(b) The head of an Executive agency or military department may detail to duties in the same or another agency or department, on a nonreimbursable basis, an employee who has been identified by the employing agency as likely to be separated from the Federal service by reduction in force or who has received a specific notice of separation by reduction in force.

"(c)(1) Details under subsection (a)—

"(A) may not be for periods exceeding 120 days; and

"(B) may be renewed (1 or more times) by written order of the head of the agency or department, in each particular case, for periods not exceeding 120 days each.

"(2) Details under subsection (b)—

"(A) may not be for periods exceeding 90 days; and

"(B) may not be renewed.

"(d) The 120-day limitation under subsection (c)(1) for details and renewals of details does not apply to the Department of Defense in the case of a detail—

"(1) made in connection with the closure or realignment of a military installation pursuant to a base closure law or an organizational restructuring of the Department as part of a reduction in the size of the armed forces or the civilian workforce of the Department; and

"(2) in which the position to which the employee is detailed is eliminated on or before the date of the closure, realignment, or restructuring.

"(e) For purposes of this section—

"(1) the term 'base closure law' means—

"(A) section 2687 of title 10;

"(B) title II of the Defense Authorization Amendments and Base Closure and Realignment Act; and

"(C) the Defense Base Closure and Realignment Act of 1990; and

"(2) the term 'military installation'—

"(A) in the case of an installation covered by section 2687 of title 10, has the meaning given such term in subsection (e)(1) of such section;

"(B) in the case of an installation covered by the Act referred to in subparagraph (B) of paragraph (1), has the meaning given such term in section 209(6) of such Act; and

"(C) in the case of an installation covered by the Act referred to in subparagraph (C) of paragraph (1), has the meaning given such term in section 2910(4) of such Act.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3341 and inserting the following:

"3341. Details; within Executive agencies and military departments; employees affected by reduction in force.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of the enactment of this Act.

TITLE V—SOFT-LANDING PROVISIONS

SEC. 501. TEMPORARY CONTINUATION OF FEDERAL EMPLOYEES' LIFE INSURANCE.

Section 8706 of title 5, United States Code, is amended by adding at the end the following:

"(g)(1) Notwithstanding subsections (a) and (b) of this section, an employee whose coverage under this chapter would otherwise terminate due to a separation described in paragraph (3) shall be eligible to continue basic insurance coverage described in section 8704 in accordance with this subsection and regulations the Office may prescribe, if the employee arranges to pay currently into the Employees Life Insurance Fund, through the former employing agency or, if an annuitant, through the responsible retirement system, an amount equal to the sum of—

"(A) both employee and agency contributions which would be payable if separation had not occurred; plus

"(B) an amount, determined under regulations prescribed by the Office, to cover necessary administrative expenses, but not to exceed 2 percent of the total amount under subparagraph (A).

"(2) Continued coverage under this subsection may not extend beyond the date which is 18 months after the effective date of the separation which entitles a former employee to coverage under this subsection. Termination of continued coverage under this subsection shall be subject to provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance as provided by subsection (a). If an eligible employee does not make an election for purposes of this subsection, the employee's insurance will terminate as provided by subsection (a).

"(3)(A) This subsection shall apply to an employee who, on or after the date of enactment of this subsection and before the applicable date under subparagraph (B)—

"(i) is involuntarily separated from a position due to a reduction in force, or separates voluntarily from a position the employing agency determines is a 'surplus position' as defined by section 8905(d)(4)(C); and

"(ii) is insured for basic insurance under this chapter on the date of separation.

"(B) The applicable date under this subparagraph is October 1, 2001, except that, for purposes of any involuntary separation referred to in subparagraph (A) with respect to which appropriate specific notice is afforded to the affected employee before October 1, 2001, the applicable date under this subparagraph is February 1, 2002.".

SEC. 502. CONTINUED ELIGIBILITY FOR HEALTH INSURANCE.

(a) CONTINUED ELIGIBILITY AFTER RETIREMENT.—Section 8905 of title 5, United States Code, is amended—

(1) in the first sentence of subsection (b) by striking "An" and inserting "Subject to subsection (g), an"; and

(2) by adding at the end the following:

"(g)(1) The Office shall waive the requirements for continued enrollment under subsection (b) in the case of any individual who, on or after the date of the enactment of this subsection and before the applicable date under paragraph (2)—

"(A) is involuntarily separated from a position, or voluntarily separated from a surplus position, in or under an Executive agency due to a reduction in force,

"(B) based on the separation referred to in subparagraph (A), retires on an immediate annuity under subchapter III of chapter 83 or subchapter II of chapter 84, and

"(C) is enrolled in a health benefits plan under this chapter as an employee immediately before retirement.

"(2) The applicable date under this paragraph is October 1, 2001, except that, for purposes of any involuntary separation referred to in paragraph (1)(A) with respect to which appropriate specific notice is afforded to the affected employee before October 1, 2001, the applicable date under this paragraph is February 1, 2002.

"(3) For purposes of this subsection, the term 'surplus position', with respect to an agency, means any position determined in accordance with regulations under section 8905a(d)(4)(C) for such agency.".

(b) TEMPORARY CONTINUED ELIGIBILITY AFTER BEING INVOLUNTARILY SEPARATED.—Section 8905a(d)(4) of title 5, United States Code, is amended—

(1) in subparagraph (A) by striking "the Department of Defense" and inserting "an Executive agency"; and

(2) by amending subparagraph (C) to read as follows:

"(C) For purposes of this paragraph, the term 'surplus position' means a position that, as determined under regulations prescribed by the head of the agency involved, is identified during planning for a reduction in force as being no longer required and is designated for elimination during the reduction in force.".

SEC. 503. PRIORITY PLACEMENT PROGRAMS FOR FEDERAL EMPLOYEES AFFECTED BY A REDUCTION IN FORCE.

(a) IN GENERAL.—Subchapter I of chapter 33 of title 5, United States Code, is amended by adding at the end the following:

"§ 3330a. Priority placement programs for employees affected by a reduction in force

"(a) Not later than 3 months after the date of the enactment of this section, each Executive agency shall establish an agencywide priority placement program, to facilitate employment placement for employees who—

"(1) are scheduled to be separated from service due to a reduction in force under—

"(A) regulations prescribed under section 3502; or

"(B) procedures established under section 3595;

"(2) are separated from service due to such a reduction in force; or

"(3) have received a rating of at least fully successful (or the equivalent) as the last performance rating of record used for retention purposes (except for employees in positions excluded from a performance appraisal system by law, regulation, or administrative action taken by the Office of Personnel Management).

"(b)(1) Each agencywide priority placement program under this section shall include provisions under which a vacant position shall not (except as provided in this subsection or any other statute providing the right of reemployment to any individual) be filled by the appointment or transfer of any individual from outside of that agency (other than an individual described in paragraph (2)) if—

"(A) there is then available any individual described in paragraph (2) who is qualified for the position; and

"(B) the position—

"(i) is at the same grade or pay level (or the equivalent) or not more than 3 grades (or grade intervals) below that of the position last held by such individual before placement in the new position;

"(ii) is within the same commuting area as the individual's last-held position (as referred to in clause (i)) or residence; and

"(iii) has the same type of work schedule (whether full-time, part-time, or intermittent) as the position last held by the individual.

"(2) For purposes of an agencywide priority placement program, an individual shall be considered to be described in this paragraph if such individual is—

"(A) an employee of such agency who is scheduled to be separated, as described in subsection (a)(1); or

"(B) an individual who became a former employee of such agency as a result of a separation, as described in subsection (a)(2), excluding any individual who separated voluntarily under section 3502(f).

"(c)(1) If after a reduction in force the agency has no positions of any type within the local commuting areas specified in this section, the individual may designate a different local commuting area where the agency has continuing positions in order to exercise reemployment rights under this section. An agency may determine that such designations are not in the interest of the Government for the purpose of paying relocation expenses under subchapter II of chapter 57.

"(2) At its option, an agency may administratively extend reemployment rights under this section to include other local commuting areas.

"(d)(1) In selecting employees for positions under this section, the agency shall place qualified present and former employees in retention order by veterans' preference subgroup and tenure group.

"(2) An agency may not pass over a qualified present or former employee to select an individual in a lower veterans' preference subgroup within the tenure group, or in a lower tenure group.

"(3) Within a subgroup, the agency may select a qualified present or former employee without regard to the individual's total creditable service.

"(e) An individual is eligible for reemployment priority under this section for 2 years from the effective date of the reduction in force from which the individual will be, or has been, separated under section 3502.

"(f) An individual loses eligibility for reemployment priority under this section when the individual—

"(1) requests removal in writing;

"(2) accepts or declines a bona fide offer under this section or fails to accept such an offer within the period of time allowed for such acceptance; or

"(3) separates from the agency before being separated under section 3502.

A present or former employee who declines a position with a representative rate (or equivalent) that is less than the rate of the position from which the individual was

separated under section 3502 retains eligibility for positions with a higher representative rate up to the rate of the individual's last position.

"(g) Whenever more than one individual is qualified for a position under this section, the agency shall select the most highly qualified individual, subject to subsection (d).

"(h) The Office of Personnel Management shall issue regulations to implement this section.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by adding after the item relating to the section 3330 the following:

"3330a. Priority placement programs for employees affected by a reduction in force.".

SEC. 504. JOB PLACEMENT AND COUNSELING SERVICES.

(a) AUTHORITY FOR SERVICES.—The head of each Executive agency may establish a program to provide job placement and counseling services to current and former employees.

(b) TYPES OF SERVICES AUTHORIZED.—A program established under this section may include such services as—

(1) career and personal counseling;

(2) training in job search skills; and

(3) job placement assistance, including assistance provided through cooperative arrangements with State and local employment service offices.

(c) ELIGIBILITY FOR SERVICES.—Services authorized by this section may be provided to—

(1) current employees of the agency or, with the approval of such other agency, any other agency; and

(2) employees of the agency or, with the approval of such other agency, any other agency who have been separated for less than 1 year, if the separation was not a removal for cause on charges of misconduct or delinquency.

(d) REIMBURSEMENT FOR COSTS.—The costs of services provided to current or former employees of another agency shall be reimbursed by that agency.

SEC. 505. EDUCATION AND RETRAINING INCENTIVES.

(a) NON-FEDERAL EMPLOYMENT INCENTIVE PAYMENTS.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) the term "eligible employee" means an employee who is involuntarily separated from a position, or voluntarily separated from a surplus position, in or under an Executive agency due to a reduction in force, except that such term does not include an employee who, at the time of separation, meets the age and service requirements for an immediate annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, other than under section 8336(d) or 8414(b) of such title;

(B) the term "non-Federal employer" means an employer other than the Government of the United States or any agency or other instrumentality thereof;

(C) the term "Executive agency" has the meaning given such term by section 105 of title 5, United States Code; and

(D) the term "surplus position" has the meaning given such term by section 8905(d)(4)(C) of title 5, United States Code.

(2) AUTHORITY.—The head of an Executive agency may pay retraining and relocation incentive payments, in accordance with this subsection, in order to facilitate the reemployment of eligible employees who are separated from such agency.

(3) RETRAINING INCENTIVE PAYMENT.—

(A) AGREEMENT.—The head of an Executive agency may enter into an agreement with a non-Federal employer under which the non-Federal employer agrees—

(i) to employ an individual referred to in paragraph (2) for at least 12 months for a salary which is mutually agreeable to the employer and such individual; and

(ii) to certify to the agency head any costs incurred by the employer for any necessary training provided to such individual in connection with the employment by such employer.

(B) PAYMENT OF RETRAINING INCENTIVE PAYMENT.—The agency head shall pay a retraining incentive payment to the non-Federal employer upon the employee's completion of 12 months of continuous employment by that employer. The agency head shall prescribe the amount of the incentive payment.

(C) PRORATION RULE.—The agency head shall pay a prorated amount of the full retraining incentive payment to the non-Federal employer for an employee who does not remain employed by the non-Federal employer for at least 12 months, but only if the employee remains so employed for at least 6 months.

(D) LIMITATION.—In no event may the amount of the retraining incentive payment paid for the training of any individual exceed the amount certified for such individual under subparagraph (A), subject to subsection (c).

(4) RELOCATION INCENTIVE PAYMENT.—The head of an agency may pay a relocation incentive payment to an eligible employee if it is necessary for the employee to relocate in order to commence employment with a non-Federal employer. Subject to subsection (e), the amount of the incentive payment shall not exceed the amount that would be payable for travel, transportation, and subsistence expenses under subchapter II of chapter 57 of title 5, United States Code, including any reimbursement authorized under section 5724b of such title, to a Federal employee who transfers between the same locations as the individual to whom the incentive payment is payable.

(5) DURATION.—No incentive payment may be paid for training or relocation commencing after June 30, 2002.

(6) SOURCE.—An incentive payment under this subsection shall be payable from appropriations or other funds available to the agency for purposes of training (within the meaning of section 4101(4) of title 5, United States Code).

(b) EDUCATIONAL ASSISTANCE.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) the term "eligible employee" means an eligible employee, within the meaning of subsection (a), who —

(i) is employed full-time on a permanent basis;

(ii) has completed at least 3 years of current continuous service in any Executive agency or agencies; and

(iii) is admitted to an institution of higher education within 1 year after separation;

(B) the term "Executive agency" has the meaning given such term by section 105 of title 5, United States Code;

(C) the term "educational assistance" means payments for educational assistance as provided in section 127(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 127(c)(1)); and

(D) the term "institution of higher education" has the meaning given such term by section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(2) AUTHORITY.—Under regulations prescribed by the Office of Personnel Management, and subject to the limitations under subsection (c), the head of an Executive agency may, in his or her discretion, provide educational assistance under this subsection to an eligible employee for a program of education at an institution of higher education after the separation of the employee.

(3) DURATION.—No educational assistance under this subsection may be paid later than 10 years after the separation of the eligible employee.

(4) SOURCE.—Educational assistance payments shall be payable from appropriations or other funds which would have been used to pay the salary of the eligible employee if the employee had not separated.

(5) REGULATIONS.—The Office of Personnel Management shall prescribe regulations for the administration of this subsection. Such regulations shall provide that educational assistance payments shall be limited to amounts necessary for current tuition and fees only.

(c) LIMITATIONS.—

(1) AGGREGATE LIMITATION.—No incentive payment or educational assistance payment may be paid under this section to or on behalf of any individual to the extent that such amount would cause the aggregate amount otherwise paid or payable under this section, to or on behalf of such individual, to exceed $10,000.

(2) LIMITATION RELATING TO EDUCATIONAL ASSISTANCE.—The total amount paid under subsection (b) to any individual—

(A) may not exceed $6,000 if the individual has at least 3 but less than 4 years of qualifying service; and

(B) may not exceed $8,000 if the individual has at least 4 but less than 5 years of qualifying service.

(3) QUALIFYING SERVICE.—For purposes of paragraph (2), the term "qualifying service" means service performed as an employee, within the meaning of section 2105 of title 5, United States Code, on a permanent full-time or permanent part-time basis (counting part-time service on a prorated basis).

TITLE VI—MISCELLANEOUS

SEC. 601. REIMBURSEMENTS RELATING TO PROFESSIONAL LIABILITY INSURANCE.

(a) AUTHORITY.—Notwithstanding any other provision of law, any amounts appropriated, for fiscal year 1997 or any fiscal year thereafter, for salaries and expenses of Government employees may be used to reimburse any qualified employee for not to exceed one-half the costs incurred by such employee for professional liability insurance. A payment under this section shall be contingent upon the submission of such information or documentation as the employing agency may require.

(b) QUALIFIED EMPLOYEE.—For purposes of this section, the term "qualified employee" means—

(1) an agency employee whose position is that of a law enforcement officer;

(2) an agency employee whose position is that of a supervisor or management official; or

(3) such other employee as the head of the agency considers appropriate

(c) DEFINITIONS.—For purposes of this section—

(1) the term "agency" means an Executive agency, as defined by section 105 of title 5, United States Code;

(2) the term "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, prosecution, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including any law enforcement officer under section 8331(20) or 8401(17) of such title 5;

(3) the terms "supervisor" and "management official" have the respective meanings given them by section 7103(a) of such title 5; and

(4) the term "professional liability insurance" means insurance which provides coverage for—

(A) legal liability for damages due to injuries to other persons, damage to their property, or other damage or loss to such other persons (including the expenses of litigation and settlement) resulting from or arising out of any tortious act, error, or omission of the covered individual (whether common law, statutory, or constitutional) while in the performance of such individual's official duties as a qualified employee; and

(B) the cost of legal representation for the covered individual in connection with any administrative or judicial proceeding (including any investigation or disciplinary proceeding) relating to any act, error, or omission of the covered individual while in the performance of such individual's official duties as a qualified employee, and other legal costs and fees relating to any such administrative or judicial proceeding.

(d) POLICY LIMITS.—

(1) IN GENERAL.—Reimbursement under this section shall not be available except in the case of any professional liability insurance policy providing for—

(A) not to exceed $1,000,000 of coverage for legal liability (as described in subsection (c)(4)(A)) per occurrence per year; and

(B) not to exceed $100,000 of coverage for the cost of legal representation (as described in subsection (c)(4)(B)) per occurrence per year.

(2) ADJUSTMENTS.—The head of an agency may from time to time adjust the respective dollar amount limitations applicable under this subsection to the extent that the head of such agency considers appropriate to reflect inflation.

SEC. 602. EMPLOYMENT RIGHTS FOLLOWING CONVERSION TO CONTRACT.

(a) IN GENERAL.—An employee whose position is abolished because an activity performed by an Executive agency (within the meaning of section 105 of title 5, United States Code) is converted to contract shall receive from the contractor an offer in good faith of a right of first refusal of employment under the contract for a position for which the employee is deemed qualified based upon previous knowledge, skills, abilities, and experience. The contractor shall not offer employment under the contract to any person prior to having complied fully with this obligation, except as provided in subsection (b), or unless no employee whose position is abolished because such activity has been converted to contract can demonstrate appropriate qualifications for the position.

(b) EXCEPTION.—Notwithstanding the contractor's obligation under subsection (a), the contractor is not required to offer a right of first refusal to any employee who, in the 12 months preceding conversion to contract, has been the subject of an adverse personnel action related to misconduct or has received a less than fully successful performance rating.

(c) LIMITATION.—No employee shall have a right to more than 1 offer under this section based on any particular separation due to the conversion of an activity to contract.

(d) REGULATIONS.—Regulations to carry out this section may be prescribed by the President.

SEC. 603. DEBARMENT OF HEALTH CARE PROVIDERS FOUND TO HAVE ENGAGED IN FRAUDULENT PRACTICES.

(a) IN GENERAL.—Section 8902a of title 5, United States Code, is amended—

(1) in subsection (a)(2)(A) by striking "subsection (b) or (c)" and inserting "subsection (b), (c), or (d)";

(2) in subsection (b)—

(A) by striking "may" and inserting "shall" in the matter before paragraph (1); and

(B) by amending paragraph (5) to read as follows:

"(5) Any provider that is currently suspended or excluded from participation under any program of the Federal Government involving procurement or nonprocurement activities.";

(3) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively, and by inserting after subsection (b) the following:

"(c) The Office may bar the following providers of health care services from participating in the program under this chapter:

"(1) Any provider—

"(A) whose license to provide health care services or supplies has been revoked, suspended, restricted, or not renewed, by a State licensing authority for reasons relating to the provider's professional competence, professional performance, or financial integrity; or

"(B) that surrendered such a license while a formal disciplinary proceeding was pending before such an authority, if the proceeding concerned the provider's professional competence, professional performance, or financial integrity.

"(2) Any provider that is an entity directly or indirectly owned, or with a 5 percent or more controlling interest, by an individual who is convicted of any offense described in subsection (b), against whom a civil monetary penalty has been assessed under subsection (d), or who has been excluded from participation under this chapter.

"(3) Any provider that the Office determines, in connection with claims presented under this chapter, has charged for health care services or supplies in an amount substantially in excess of such provider's customary charges for such services or supplies (unless the Office finds there is good cause for such charge), or charged for health care services or supplies which are substantially in excess of the needs of the covered individual or which are of a quality that fails to meet professionally recognized standards for such services or supplies.

"(4) Any provider that the Office determines has committed acts described in subsection (d).";

(4) in subsection (d), as so redesignated by paragraph (3), by amending paragraph (1) to read as follows:

"(1) in connection with claims presented under this chapter, that a provider has charged for a health care service or supply which the provider knows or should have known involves—

"(A) an item or service not provided as claimed;

"(B) charges in violation of applicable charge limitations under section 8904(b); or

"(C) an item or service furnished during a period in which the provider was excluded from participation under this chapter pursuant to a determination by the Office under this section, other than as permitted under subsection (g)(2)(B);";

(5) in subsection (f), as so redesignated by paragraph (3), by inserting "(where such debarment is not mandatory)" after "under this section" the first place it appears;

(6) in subsection (g), as so redesignated by paragraph (3)—

(A) by striking "(g)(1)" and all that follows through the end of paragraph (1) and inserting the following:

"(g)(1)(A) Except as provided in subparagraph (B), debarment of a provider under subsection (b) or (c) shall be effective at such time and upon such reasonable notice to such provider, and to carriers and covered individuals, as shall be specified in regulations prescribed by the Office. Any such provider that is excluded from participation may request a hearing in accordance with subsection (h)(1).

"(B) Unless the Office determines that the health or safety of individuals receiving health care services warrants an earlier effective date, the Office shall not make a determination adverse to a provider under subsection (c)(4) or (d) until such provider has been given reasonable notice and an opportunity for the determination to be made after a hearing as provided in accordance with subsection (h)(1).";

(B) in paragraph (3)—

(i) by inserting "of debarment" after "notice"; and

(ii) by adding at the end the following: "In the case of a debarment under paragraphs (1) through (4) of subsection (b), the minimum period of exclusion shall not be less than 3 years, except as provided in paragraph (4)(B)(ii).."; and

(C) in paragraph (4)(B)(i)(I) by striking "subsection (b) or (c)" and inserting "subsection (b), (c), or (d)";

(7) in subsection (h), as so redesignated by paragraph (3), by striking "(h)(1)" and all that follows through the end of paragraph (2) and inserting the following:

"(h)(1) Any provider of health care services or supplies that is the subject of an adverse determination by the Office under this section shall be entitled to reasonable notice and an opportunity to request a hearing of record, and to judicial review as provided in this subsection after the Office renders a final decision. The Office shall grant a request for a hearing upon a showing that due process rights have not previously been afforded with respect to any finding of fact which is relied upon as a cause for an adverse determination under this section. Such hearing shall be conducted without regard to subchapter II of chapter 5 and chapter 7 of this title by a hearing officer who shall be designated by the Director of the Office and who shall not otherwise have been involved in the adverse determination being appealed. A request for a hearing under this subsection must be filed within such period and in accordance with such procedures as the Office shall prescribe by regulation.

"(2) Any provider adversely affected by a final decision under paragraph (1) made after a hearing to which such provider was a party may seek review of such decision in the United States District Court for the District of Columbia or for the district in which the plaintiff resides or has his principal place of business by filing a notice of appeal in such court within 60 days from the date the decision is issued and simultaneously sending copies of such notice by certified mail to the Director of the Office and to the Attorney General. In answer to the appeal, the Director of the Office shall promptly file in such court a certified copy of the transcript of the record, if the Office conducted a hearing, and other evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and evidence of record, a judgment affirming, modifying, or setting aside, in whole or in part, the decision of the Office, with or without remanding the cause for a rehearing. The district court shall not set aside or remand the decision of the Office unless there is not substantial evidence on the record, taken as a whole, to support the findings by the Office of a cause for action under this section or unless action taken by the Office constitutes an abuse of discretion."; and

(8) in subsection (i), as so redesignated by paragraph (3)—

(A) by striking "subsection (c)" and inserting "subsection (d)"; and

(B) by adding at the end the following: "The amount of a penalty or assessment as finally determined by the Office, or other amount the Office may agree to in compromise, may be deducted from any sum then or later owing by the United States to the party against whom the penalty or assessment has been levied.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on the date of the enactment of this Act.

(2) EXCEPTIONS.—(A) Paragraphs (2) and (4) of section 8902a(c) of title 5, United States Code, as amended by subsection (a), shall apply only to the extent that the misconduct which is the basis for debarment thereunder occurs after the date of the enactment of this Act.

(B) Section 8902a(d)(1)(B) of title 5, United States Code, as amended by subsection (a), shall apply only with respect to charges which violate section 8904(b) of such title 5 for items and services furnished after the date of the enactment of this Act.

(C) Section 8902a(g)(3) of title 5, United States Code, as amended by subsection (a), shall apply only with respect to debarments based on convictions occurring after the date of the enactment of this Act.

SEC. 604. CONVERSION OF CERTAIN EXCEPTED SERVICE POSITIONS IN THE UNITED STATES FIRE ADMINISTRATION TO COMPETITIVE SERVICE POSITIONS.

(a) IN GENERAL.—No later than the date described under subsection (d)(1), the Director of the Federal Emergency Management Agency and the Director of the Office of Personnel Management shall take such actions as necessary to convert each excepted service position established before the date of the enactment of this Act under section 7(c)(4) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2206(c)(4)) to a competitive service position.

(b) EFFECT ON EMPLOYEES.—Any employee employed on the date of the enactment of this Act in an excepted service position converted under subsection (a)—

(1) shall remain employed in the competitive service position so converted without a break in service;

(2) by reason of such conversion, shall have no—

(A) diminution of seniority;

(B) reduction of cumulative years of service; and

(C) requirement to serve an additional probationary period applied; and

(3) shall retain their standing and participation with respect to chapter 83 or 84 of title 5, United States Code, relating to Federal retirement.

(c) PROSPECTIVE COMPETITIVE SERVICE POSITIONS.—Section 7(c)(4) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2206(c)(4)) is amended to read as follows:

"(4) appoint faculty members to competitive service positions and with respect to temporary and intermittent services, to make appointments of consultants to the same extent as is authorized by section 3109 of title 5, United States Code;".

(d) EFFECTIVE DATE.—(1) Except as provided under paragraph (2), this section shall take effect on the first day of the first pay period, applicable to the positions described under subsection (a), beginning after the date of the enactment of this Act.

(2)(A) The Director of the Federal Emergency Management Agency and the Director of the Office of Personnel Management shall take such actions as directed under subsection (a) on and after the date of the enactment of this Act.

(B) Subsection (c) shall take effect on the date of the enactment of this Act.

SEC. 605. ELIGIBILITY FOR CERTAIN SURVIVOR ANNUITY BENEFITS.

For the purpose of determining eligibility for survivor annuity benefits for a former spouse under section 8341 of title 5, United States Code, an application of any former spouse shall be approved if—

(1) the annuitant is deceased;

(2) the former spouse was living as of January 1, 1992;

(3) the former spouse has not received Social Security benefits based on eligibility as the spouse of the annuitant;

(4) such application was filed on or after January 1, 1989;

(5) the annuitant rendered at least 25 years of creditable service to the Federal Government;

(6) at the time of the annuitant's retirement, the annuitant and the former spouse had been married at least 25 years;

(7) at the time of the annuitant's retirement, the annuitant designated the former spouse to receive survivor annuity benefits;

(8) the annuitant and the former spouse were divorced prior to September 14, 1978, and after the annuitant retired;

(9) neither at the time of the divorce nor at any time thereafter was a joint waiver of survivor annuity benefits executed between the annuitant and the former spouse;

(10) the divorce decree was silent as to survivor annuity benefits or designated the former spouse to receive survivor annuity benefits;

(11) subsequent to the divorce of the annuitant and the former spouse, the annuitant advised the Office of Personnel Management of the divorce;

(12) neither the annuitant nor the former spouse married any other individual after their divorce from each other;

(13) no direct notice outlining or defining the former spouse's survivor annuity benefits election rights was delivered to the former spouse by the Office of Personnel Management; and

(14) the former spouse has exhausted all judicial remedies up to and including remedies available through the United States Court of Appeals.

SEC. 606. AMENDMENT TO PUBLIC LAW 104–134.

Paragraph (3) of section 3110(b) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134; 110 Stat. 1321–343) is amended to read as follows:

"(3) The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required by sections 8432 and 8351 of title 5, United States Code, for those employees who elect to retain their coverage under the Civil Service Retirement System or the Federal Employees' Retirement System pursuant to paragraph (1).".

SEC. 607. MISCELLANEOUS AMENDMENTS RELATING TO THE HEALTH BENEFITS PROGRAM FOR FEDERAL EMPLOYEES.

(a) DEFINITION OF A CARRIER.—Paragraph (7) of section 8901 of title 5, United States Code, is amended by striking "organization;" and inserting "organization and the Government-wide service benefit plan sponsored by an association of organizations described in this paragraph;".

(b) SERVICE BENEFIT PLAN.—Paragraph (1) of section 8903 of title 5, United States Code, is amended by striking "plan," and inserting "plan, underwritten by participating affiliates licensed in any number of States,".

(c) PREEMPTION.—Section 8902(m) of title 5, United States Code, is amended by striking "(m)(1)" and all that follows through the end of paragraph (1) and inserting the following:

"(m)(1) The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans.".

SEC. 608. PAY FOR CERTAIN POSITIONS FORMERLY CLASSIFIED AT GS–18.

Notwithstanding any other provision of law, the rate of basic pay for positions that were classified at GS–18 of the General Schedule on the date of the enactment of the Federal Employees Pay Comparability Act of 1990 shall be set and maintained at the rate equal to the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.

SEC. 609. REPEAL OF SECTION 1307 OF TITLE 5 OF THE UNITED STATES CODE.

(a) IN GENERAL.—Section 1307 of title 5, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 13 of title 5, United States Code, is amended by repealing the item relating to section 1307.

SEC. 610. MANDATORY INTERNAL ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) IN GENERAL.—Notwithstanding any other provision of law, each agency, in consultation with the Federal Mediation and Conciliation Service, may develop mandatory internal alternative dispute resolution procedures covering—

(1) any complaint of discrimination described in clauses (i) through (v) of section 7702(a)(1)(B) of title 5, United States Code;

(2) any matter appealable to the Merit Systems Protection Board (other than any matter arising under subchapter III of chapter 83 or chapter 84 of title 5, United States Code); and

(3) any matter reviewable by the Office of Special Counsel.

(b) GUIDELINES.—The Federal Mediation and Conciliation Service, in conjunction with the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the Office of Special Counsel, and the Office of Personnel Management, shall issue guidelines to assist agencies in the formulation of appropriate alternative dispute resolution procedures. Such guidelines shall include protections against undue influence on either part to settle, identification of circumstances in which use of such procedures may be inappropriate, suggested time frames for all steps in such procedures and for extensions of time frames by mutual consent, and procedures for agreements to stipulate to issues of fact or law if no resolution is reached.

(c) DEFINITION.—For purposes of this section, the term "agency" means an Executive agency, as defined by section 105 of title 5, United States Code.

SHORT SUMMARY OF LEGISLATION

H.R. 3841, the Omnibus Civil Service Reform Act of 1996, revises the Executive Branch's ability to conduct demonstration projects under Chapter 47 of Title 5, U.S. Code, and enhances the role of performance management in several employee evaluation activities. The bill expands the array of benefits available under the Thrift Savings Plan, including enabling new employees to begin contributing to their retirement accounts when they enter the workforce, al-

lowing entering employees to roll their individual 401(k) retirement accounts into their Thrift Savings Plan accounts, and liberalizing the terms under which employees can borrow or withdraw their contributions.

The bill also authorizes agencies to exercise additional flexibility in reducing their workforces by allowing employees to volunteer for RIFs and by authorizing employees to enter into nonreimbursable details as a means of demonstrating their skills for potential new employers. The bill creates a variety of "soft-landing" options to ease the transition between federal and private sector employment. These include allowing employees to continue their Federal Employees Group Life Insurance coverage by paying the premiums after leaving federal service, extending for up to eighteen months the period during which agencies may continue to pay the employer share of premium in the Federal Employees Health Benefits Program, and creating a combination of within-agency priority placement programs, education, retraining, and relocation assistance programs that will ease post-federal employment transitions.

The bill enables agencies to reimburse federal employees for the costs of certain forms of liability insurance, authorizes disbarment of health care providers who have committed fraud against the Federal Employees Health Benefits Program, and will ensure that FBI personnel have access to the same Merit System Protection Board personnel appeals system as other federal employees.

I. Background and Need for the Legislation

Laws governing the federal civil service have not had a major revision since the Civil Service Reform Act of 1978. Federal human resources management policies were a prime target of the Clinton Administration's National Performance Review, and the Administration proposed a "Federal Human Resources Management Reinvention Act of 1995" to address deficiencies that were identified in agencies' examination of human resource laws and regulations. The Civil Service Subcommittee conducted nearly twenty hearings throughout 1995 and the beginning of 1996, into various aspects of federal human resource management policies. The Subcommittee identified a number of problem areas in need of reform.

A. DEMONSTRATION PROJECTS

One leading element of the Administration's proposal was a broad capacity to expand current provisions of Chapter 47 of Title 5, U.S. Code. These provisions restrict demonstration projects to a total of ten government wide, require that demonstration projects cover no more than 5,000 people, impose extensive approval processes and reporting on the agencies conducting them, but do not provide for effective evaluation and resolution of demonstration projects. As a result, OPM reported at the Subcommittee's July 16 hearing that only one demonstration project is in progress, but the agency anticipates that several more could be approved quickly under more workable provisions of law.

While the Civil Service Subcommittee initiated this review of federal law, the Congress authorized the Federal Aviation Administration to establish an alternative personnel management system (in

the Transportation Appropriations Bill for FY–1996), and authorized the Department of Defense to conduct a demonstration project with its acquisitions workforce. That provision of the Department of Defense Authorization Act of 1995 enabled the Department to exceed the 5,000 employee ceiling established for demonstration projects in Title 5, U.S. Code. Neither of these activities would count within the 10 project limit in Chapter 47 because they are authorized by separate legislation. The Congress encountered human resources management problems in issues related to workforce reductions at the National Security Agency, during deliberations related to proposals to eliminate Cabinet Departments and other agencies, and in the course of other efforts to consolidate functions currently performed in different agencies. At several hearings, the Civil Service Subcommittee heard witnesses emphasize the importance of flexibility for managers who would have to exercise responsibility for reducing agency staff. These factors all contributed to the Subcommittee's desire to provide legislation to resolve some of the crucial issues facing the federal workforce.

B. PERFORMANCE AND ACCOUNTABILITY

The Subcommittee's initial hearings (October 12, 13, and 25, 1995) provided opportunities for the Administration, employee organizations, officials from previous administrations, scholars, and other organizations to describe the deficiencies of current personnel management systems. Witnesses agreed that agencies faced different issues as a result of efforts to reduce the size and scope of government than they had experienced in recruiting, hiring, training, promoting, and retaining personnel for large agencies. When new technologies were introduced, and required changes in employees' skills, or when functions were changed in agencies, agencies often could not adapt to new requirements. OPM authorized agencies to institute new personnel evaluation and rating systems, including options for "pass/fail" systems, and many agencies appeared eager to move toward less rigorous evaluation procedures. Mrs. Morella, during hearings, expressed strong reservations about "pass/fail" ratings, and several witnesses agreed that such systems worked contrary to efforts to improve links between performance and accountability. With the repeal of the Performance Management and Recognition System in 1993 agencies encounter growing challenges rewarding those who excel and achieving accountability for failures of government operations.

C. ENHANCEMENT OF THE THRIFT SAVINGS PLAN

The Subcommittee's hearings identified that the key obstacles to providing employees the flexibility needed to move between positions in the private sector and public service center on the portability of benefits. Employees are less likely to move between positions if they fear that they would lose pension rights, insurance benefits, access to and coverage for health care needs, or other concerns. Several Members introduced legislation to ease transitions, with many of the proposals initially centered upon the Department of Defense base closures, but with the concerns shared widely among Members and affected organizations.

One critical factor in increasing the portability of retirement funds is the ability of employees to control funds that are contributed toward retirement accounts. Since its introduction in 1986, the Thrift Savings Plan (TSP) component of the Federal Employees Retirement System (FERS) has increased participation among federal employees and gained market confidence to the extent that its three investment options now contain more than $30 billion in assets. Mrs. Morella introduced a bill to increase the investment options available under the Thrift Savings Plan. As a result of borrowing problems identified during the government shutdowns of November and December, 1995, the Subcommittee added provisions that would reduce restrictions on employees either borrowing from or withdrawing savings that they had deposited into TSP accounts. The Subcommittee also addressed portability concerns by including provisions that would enable employees entering federal service to deposit funds into TSP accounts that had accumulated in 401(k) plans or other private retirement accounts.

D. REORGANIZATION FLEXIBILITY

During the Subcommittee's May 23, 1996, hearing, the General Accounting Office testified that it had incorporated provisions into its new reduction-in-force regulations that allowed employees to volunteer for a RIF if that might serve the agency's requirements for staff reduction. The Subcommittee had previously approved similar voluntary RIF provisions in FY 1996 authorizing legislation for the Department of Defense. By allowing employees not otherwise affected by a RIF to volunteer the jobs of non-retirement eligible employees can be spared.

The Subcommittee also concluded that greater flexibility to detail employees to other agencies might be used to facilitate the exchange of personnel within government. Current law permits temporary assignments of employees between agencies only when the receiving agency assumes payroll costs. By the elimination of the requirement for reimbursement donor agencies could facilitate the placement of their surplus employees on a trial in other agencies.

E. SOFT LANDINGS

In addition to pension portability, several other concerns dominate the attention of federal employees who face potential loss of positions during downsizing. Options for continuation of life and health insurance, measures that would strengthen the portability of pensions, and assistance with costs associated with education, professional training, or relocation were combined into legislation introduced by Mr. Wolf and co-sponsored by several other Members. H.R. 2751, as introduced, gained considerable support, and was endorsed broadly by several Members at a hearing conducted May 8, 1996.

The bill would provide federal employees the ability to continue life insurance coverage after separation from service by paying premiums. It would authorize agencies to continue payment of the government's portion of health insurance premiums for as long as eighteen months after separation. Under this authority, federal agencies would be required to establish internal priority placement programs, and could provide employees with outplacement counsel-

ing services. The bill also contains incentives that would enable agencies to reimbursement for the costs associated with retraining, additional education, or relocation associated with taking a position outside of federal service.

F. OTHER PROVISIONS

The Subcommittee included in this bill provisions that can address a series of proposed improvements in federal human resources management practices. The Senior Executives Association recommended that agencies be authorized to purchase liability insurance for federal employees who might be subject to litigation for actions undertaken in the course of official duties, but whose agencies might be unwilling to provide full defense counsel for them.

When activities performed by federal agencies are converted to contract under OMB Circular A-76, affected employees are granted a "right of first refusal" to positions with the contractor. This provision is currently adopted only in Executive Order, and the Subcommittee believes that it would provide additional employment security to employees who might be affected by contracting of commercial activities now performed by government agencies.

The bill also carries a number of additional provisions which address some long standing civil service problems and amendments of a technical nature. These include debarment of health care providers found to have engaged infraudulent practices, conversion of certain positions in the United States Fire Administration, and establishment of mandatory alternative dispute resolution (ADR) procedures. The ADR provisions are intended to address the growing disenchantment with the current appeals mechanism in the federal workplace.

The National Performance Review had called attention to the need for a review of the appeals process and the Treasury Postal Appropriations Subcommittee of the House had charged OMB with the preparation of a report to the Congress on this matter. The Senior Executive Association testified at Civil Service Subcommittee hearings that managers believe that the current appeals system does not deter disgruntled employees from filing false or frivolous claims, causing many managers to hesitate to deal with problem performers. GAO testified that the average time between filing a complaint with the employing agency and an Equal Employment Opportunity Commission decision averages more than 800 days. Federal employees also file workplace discrimination complaints at six times the rate of private sector employees. Between 1991 and 1994, the number of discrimination complaints filed has risen substantially, to the extent that the inventory of appeals to EEOC of agencies" final decisions has tripled. During 1994, MSPB decided 2,000 "mixed cases," (that is, cases involving claims of discrimination as well as some other prohibited personnel practice). It found discrimination in only eight of them. Employees who are dissatisfied with an MSPB decision on a discrimination claim can file with the EEOC. GAO reports that EEOC disagreed with the MSPB in only three out of 200 cases that were appealed during 1994, and that MSPB accommodated its findings to the EEOC position in those cases.

Provisions to streamline the employee appeals process had been included in this bill in an attempt to alleviate some of the burdens in the current system. At the request of the minority, the Subcommittee agreed to remove the proposed remedies pending further discussions and considerations. Provisions to encourage greater use of alternative dispute resolutions were substituted instead.

II. Legislative Hearings and Committee Actions

H.R. 3841 was introduced by Civil Service Subcommittee Chairman John L. Mica (for himself, Mr. Moran, and Mrs. Morella) on July 17, 1996, and referred to the Committee on Government Reform and Oversight. The bill combined provisions that had previously been introduced as H.R. 2082, H.R. 2306, H.R. 2683, H.R. 2688, H.R. 2751, H.R. 2825, H.R. 2858, H.R. 3129, H.R. 3483, H.R. 3574, S. 1488, and H.R. 3649. The Civil Service Subcommittee conducted a hearing on the bill on July 16, 1996. The bill was marked-up in the Civil Service Subcommittee on July 18, 1996, where Subcommittee Chairman Mica presented the bill.

One amendment was offered by Mr. Moran and agreed to without objection. This amendment struck Section II of H.R. 3841, which would have streamlined the appeals process available to federal employees. The Subcommittee agreed to continue discussions on this topic to develop acceptable language for an amendment which would be included later in the legislative process.

The Government Reform and Oversight Committee met on July 25, 1996 to consider H.R. 3841. Civil Service Subcommittee Chairman presented an amendment in the nature of a substitute to H.R. 3841, reflecting the Subcommittee amendment. Mr. Moran offered three amendments, en bloc, which were agreed to without objection. The first amendment directs the General Accounting Office to conduct a study and submit a report to the Committee on Government Reform and Oversight. The report would analyze the relationship of performance rating systems and several designated personnel actions. The second amendment requires federal agencies to establish alternative dispute resolution procedures that would precede formal appeals procedures through the Merit Systems Protection Board and/or the Equal Employment Opportunity Commission. The third amendment struck section 604 of the bill, which would have extended to certain employees of the Federal Bureau of Investigation appeal rights before the Merit Systems Protection Board that are available to employees of other agencies. Mrs. Morella offered an amendment, which was agreed to without objection, to require the Office of Personnel Management to ensure that employees rated under different performance evaluation systems are treated equitably in the event of a reduction in force. The bill, as amended, was favorably reported to the House unanimously by voice vote and without further amendment by the full Committee.

III. Committee Hearings and Written Testimony

The Civil Service Subcommittee began a series of hearings specifically addressing civil service reform proposals on October 12 and 13, 1995. The National Performance Review's review of federal human resources policies concluded, "The federal human resource

administrative system contains major impediments to efficient and effective management of the workforce." Chairman Mica observed, "We must redirect government agencies to address changing priorities as we head into the Twenty-First Century. American business and industry have undergone dramatic changes in the past decade. Now, our federal government and civil service system must also respond to changing times."

Office of Personnel Management (OPM) Director James B. King described a system whose major strength is that it protects merit principles and advances the interests of the nation's veterans, but does so through systems that are too rigid and complex, causing agencies to focus on process rather than results. Office of Management and Budget (OMB) Deputy Director for Management John Koskinen described changes in the professional qualifications desired of many federal managers, a contrast with the skills sought a generation ago. The Administration desired greater flexibility in managing their personnel while adhering to merit system principles. Deputy Secretary Mortimer Downey of the Department of Transportation contended that current civil service laws and procedures do not support efforts to develop high-performance units that reward knowledge, judgment, teamwork, and problem solving in response to rapidly changing forces. He claimed that the system encourages hierarchy at the expense of accountability. The Government Performance and Results Act (GPRA) is promoting some changes, but more will be needed to hire and develop an effective future workforce. Dr. Walter Broadnax, Deputy Secretary of the Department of Health and Human Services, focussed upon the classification and compensation issues. In response to Chairman Mica's question, both Deputy Secretaries agreed on the desirability for more flexible methods of addressing problems of poor performance.

Panelists agreed that the current system to remove poor performers is something that managers will only use once. Director King observed that, in a reduction-in-force (RIF) situation, employees having "bumping" rights might not be suited to the lower-level positions that they could occupy after a RIF. In effect, current supervisors could be impaired by their ineffective management of the performance rating system. In response to questions from Mrs. Morella, both Deputy Secretaries admitted that their agencies are moving in the direction of "pass/fail" appraisal systems, broadly linked to organizational goals.

Mr. L. Nye Stevens, the General Accounting Office's Director of Federal Workforce and Management Issues, observed that although there is broad agreement about the principles underlying the National Performance Review's sense of direction, he has not discerned much legislative support for specific measures to implement them. Former OPM Director Constance Horner stressed the importance of linking future performance ratings to objective measures, as contemplated by the Government Performance and Results Act.

The Civil Service Subcommittee conducted a hearing on performance management in the federal workforce on October 26, 1995. Chairman Mica observed that federal agencies appear to have difficulties managing people, and that the major reform initiatives envisioned in the Civil Service Reform Act of 1978 have not improved the performance and accountability of federal agencies. OPM data

report that 99.6 percent of federal employees are rated "fully successful" or better, with 73 percent rated "exceeds fully successful" or "outstanding." Nonetheless, data provided by the Merit Systems Protection Board (MSPB) showed that 78 percent of federal managers believe that they have supervised employees defined as "poor performers," and they lack confidence that the government's human resource management tools are adequate to address problems related to poor performance. Thus, only 23 percent of these managers initiated measures to demote or terminate problem employees.

Mrs. Morella commented that she had reservations about moving toward "pass/fail" performance evaluation systems, and that previous hearings left her with the impression that federal managers were more interested in managerial flexibility than the related accountability. Effective performance rating systems should probably include methods of weighting the multiple factors involved in evaluation.

Ms. Sandra O'Neil of the Society for Human Resource Management, indicated that a three-point scale can be sufficient to identify superior and ineffective employees while minimizing the inclination to inflate ratings that is involved in more differentiated systems. Dr. Joyce Shields, of Hay Management Consultants, Inc., stressed that evaluation systems should be linked to superior performance, and include incentives for improvement. Effective organizations frequently obtain 360-degree feedback, with sources including peers, supervisors, subordinates, customers, and self-evaluations. Line management is held accountable, and good systems are designed to increase employees" skills. Performance management needs selective reinvention to support the government's budget-balancing efforts. Dr. Shields observed that effective measures to address poor performance begin on the front end—emphasizing the high expectations of excellent performers—but must include top-down willingness to impose sanctions on poor management.

Mr. Frank Cipolla, of the National Academy of Public Administration, observed that a performance management system requires a link between individuals and the organization's performance. Performance issues are addressed best by designing workflow, according to intended outcomes that are defined early. The Government Performance and Results Act of 1993 provides a vehicle to implement these procedures in federal agencies. He observed that the multiple appellate systems affecting federal agencies need to be streamlined. Even streamlining, however, will not make the system effective unless managers are willing to use available accountability mechanisms. Any comprehensive civil service reform would have to incorporate rethinking of career and tenure-based employment principles. Although concerns about performance have been central to previous civil service reforms, we still don't have a system that works well. He emphasized the need for rethinking of the classification system. The panel agreed that the private sector shares many of the government's human resource management problems in the area of performance assessment.

On November 29, 1996 the Civil Service Subcommittee held a hearing to identify the issues attendant with streamlining the appeals procedures for federal employees. Evangeline Swift, Director

of Policy and Evaluation at the Merit Systems Protection Board (MSPB), reported that the agency received 8,775 appeals in 1994, of which only 204 were appeals of performance-based actions under Chapter 43. Of the 224 appeals heard by the Board that year, 109 involved affirmative defenses alleging discrimination. MSPB conducted a survey of 5,700 federal managers, and many of the respondents believe that, if they took action, management would not support them if challenged. They also reported that they frequently received inconsistent and contradictory guidance from agency experts on the procedures. Despite the sentiments reflected in the survey, Ms. Swift observed that most terminations are unchallenged, and when they are challenged, management is upheld in the vast majority of cases.

Mr. G. Jerry Shaw, executive director of the Senior Executive Association, argued that to take an action against a poorly performing employee is to invite a plethora of attacks by the employee on the manager. The Senior Executives Association surveyed its members, and found numerous reports of "frequent filers," many of them filing frivolous complaints in a multitude of forums. Agencies are widely believed to be willing to settle rather than contest the claims, especially in light of the diversion of time and effort involved in addressing them. The plethora of frivolous complaints clogging the system appear to have crowded out legitimate complaints that don't get filed because of the delays involved.

Mr. Robert E. Tobias, National President of the National Treasury Employees Union, asserted that current federal procedures are easier and the burden of proof is less burdensome than private organizations. He contended that the current failure is a failure to engage the perceived poor performer and provide support, assistance, and training. If 77 percent of managers with problem employees took no action, that is not a system failure. Nonetheless, the widespread perception of systemic flaws demands a response, and Mr. Tobias would substitute an arbitration system, fashioned through collective bargaining, as a one-stop alternative to the current system. Mr. Shaw also contended that the Civil Service Reform Act's use of "substantial" evidence, rather than a "preponderance" has appropriately reduced what had been an excessive burden of proof on agencies.

On May 8, 1996, the Civil Service Subcommittee conducted a hearing on legislation addressing issues related to federal workforce reductions and proposed measures to provide soft landings for affected federal employees. H.R. 2751, a proposal introduced by Mr. Wolf and several colleagues to provide separation incentive payments, retraining, relocation, and educational assistance, and to continue health and life insurance coverage for separated employees consolidated several measures addressing related issues. Delegate Norton proposed the creation of both governmentwide and agency priority placement systems for federal employees who might be separated during workforce reductions. Mrs. Morella recommended H.R. 2825 to provide additional re-employment training opportunities for federal employees. Several members recommended measures to waive requirements that employees who retire before qualifying for full annuities receive pensions that are reduced commensurate with their lower age at separation.

The Civil Service Subcommittee continued its oversight of the Administration's workforce reduction efforts at a hearing on May 23, 1996. This hearing demonstrated that the Administration spent more than $2.8 billion providing voluntary separation incentive payments (buyouts) to federal employees without achieving the restructuring goals targeted by the National Performance Review. Mr. Timothy P. Bowling, Associate Director of the General Accounting Office for Federal Workforce Management Issues testified that the Administration is ahead of the workforce reduction goals established by the Federal Workforce Restructuring Act of 1994 (P.L. 103-226), but added that nearly all federal workforce reductions in 1997 will focus on the Department of Defense; non-defense agencies are slated to increase employment by 2,000 positions. The managerial functions that were targeted by NPR, however, have not been reduced consistent with those recommendations. Indeed, in some cases, those functions have increased as a portion of the federal workforce.

Mr. John A. Koskinen, OMB's Deputy Director for Management, testified that "budgetary resources are not expected to be available to the agencies to meet the salary and other costs of a workforce that is any larger" than provided under the Federal Workforce Restructuring Act. Both Koskinen and OPM Director King recommended the Administration's approach to adjusting civil service laws to manage workforce reductions more effectively than possible under current provisions. G. Jerry Shaw, General Counsel of the Senior Executive Association, remarked that the current efforts to reduce the federal workforce is having a major impact on middle managers and professionals that differs from previous workforce reductions, and he recommended that the Subcommittee consider the different retraining requirements that derive from these differences.

The General Accounting Office also reported to the Subcommittee on its revision of RIF regulations and recommended the inclusion of authority to volunteer for RIFs.

On July 16, 1996, the Civil Service Subcommittee invited several witnesses to provide comments on draft provisions under consideration for inclusion in the bill. The Office of Personnel Management remained supportive of the Administration's recommendations, and advised that it would have no problems implementing the measures contemplated. Roger W. Mehle testified that the Federal Retirement Thrift Investment Board, which governs the Thrift Savings Plan, was receptive to the additional options being provided for federal employees" investments. The Board advised that provisions eliminating restrictions on employees ability to borrow or withdraw their TSP contributions could result in administrative savings.

IV. Explanation of the Bill—Section by Section

Section 1. Short title and table of contents.

This section provides a short title for the bill, the "Omnibus Civil Service Act of 1996," and a table of contents.

TITLE I—DEMONSTRATION PROJECTS

Section 101. Demonstration projects

This section provides increased authority and streamlined procedures for the Office of Personnel Management (OPM) and other agencies to conduct demonstration projects. It permits agencies to develop demonstration projects on their own initiative and submit them to OPM for approval. Under this section, government corporations may participate in demonstration projects. This section also amends current law to permit the waiver of laws relating to leave other than Family and Medical Leave and to prohibit the waiver of subchapters II and III of chapter 73 of title 5, United States Code.

This section establishes new limits on the time and scope of demonstration projects, increases the number of projects permitted, and lifts the current cap on the number of employees who may be covered. Demonstration projects may last for a maximum of 5 years. However, they may be continued beyond that date for a maximum of 2 years to the extent necessary to validate the results. The limit on the number of demonstration projects that may be in effect at any one time is increased from 10 to 15, not more than 5 of which may involve more than 5,000 employees each (exclusive of employees in control groups).

OPM may require the agency conducting a demonstration project to also perform the mandatory evaluation of the results of the project and its impact on public management.

This section also requires OPM to take any corrective action within its authority if it determines that the termination of a demonstration project would create inequities for participating employees. If legislation is necessary to correct the inequity, OPM is required to submit an appropriate legislative proposal to Congress. OPM is also required to submit an appropriate legislative proposal to Congress if it determines that a demonstration project should be made permanent.

TITLE II—PERFORMANCE MANAGEMENT ENHANCEMENT

Section 201. Increased weight given to performance management for retention in a RIF

This section puts increased emphasis upon performance in determining who is retained during a reduction in force (RIF). It builds upon and modifies OPM's current regulatory scheme for weighing performance in RIFs. Under this section, employees will be credited with additional years of service based upon the sum of their three most recent performance ratings (or assumed ratings) in the four years preceding the RIF or the agency-established cutoff date. Employees will earn five years of additional service for each rating of fully successful or equivalent (Level 3), 7 years for each rating of exceeds fully successful or equivalent (Level 4), or 10 years for each rating of outstanding or equivalent (Level 5).

This section also establishes rules for crediting years of service when an agency uses a pass/fail appraisal system, a two-level system, and one with three or more levels to measure performance at the level of fully successful or better. Employees earn 5 years of ad-

ditional service for each "pass" rating. In a two-level system, they earn 5 years for the lower rating, and 7 for the higher. When an agency uses three or more levels, employees earn 5 years for the lowest rating, 7 for the next highest, and 10 for each higher rating.

Employees who have not received one or more of the three actual performance ratings required will be credited with 5 years of service for each missing rating.

This section requires GAO to issue a report to the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs analyzing a number of issues related to performance management, including the compatibility of "pass/fail" performance systems with the statutory requirement that efficiency or performance ratings be given "due effect" during RIFs, and recommend improvements in the effectiveness of federal performance evaluation systems. The study is due within 270 days of the date of enactment.

This section also requires OPM to issue regulations to ensure that in RIFs occurring on or October 1, 1999, employees are treated equitably when their agency has more than one performance evaluation system and that employees in the same competitive area are not adversely affected as a result of having been covered by different performance systems.

The RIF rules established in this section will apply to RIFs taking effect on or after October 1, 1999.

Section 202. No appeal of denial of periodic step increases

This section amends 5 U.S.C. § 5535 to eliminate appeals of denials of within-grade step increases to the Merit Systems Protection Board. Nothing in this section is intended to prohibit an employee from grieving the denial of a within-grade increase under any grievance procedure.

The section also changes the standard for determining when an employee may receive a step increase from work at "an acceptable level of competence" to fully successful performance or better.

Section 203. Performance appraisals

This section amends 5 U.S.C. § 302 to provide (1) that, in addition to reassignments, reductions in grade, and removals, agencies may take "any other appropriate action" against a poor performer and (2) that an employee must be afforded an opportunity to demonstrate acceptable performance before the agency proposes to demote or remove the employee for unacceptable performance. The employee is not entitled to another opportunity to demonstrate acceptable performance if the employee's performance is again determined to be unacceptable.

This section shall take effect 180 days after the date of enactment, but shall not apply to any proposed action as to which the employee has received advance written notice in accordance with 5 U.S.C. § 4303(b)(1)(A) before the effective date.

Section 204. Amendments to incentive awards authority

This section amends the definitions in 5 U.S.C. § 4501 to eliminate all references to the government of the District of Columbia. It also amends section 4503 to permit cash awards to groups based

upon a suggestion, invention, superior accomplishment, act, service, or other meritorious act of a group of employees collectively. A group award is permissible when, for example, it is infeasible to determine the relative role or contribution of each individual member of the group. Each member's award may not exceed the limits established in section 4502, and the awards to members of the group must be equal. However, awards may be prorated to reflect differences in the period of time during which an individual was a member of the group.

Section 205. Due process rights of managers under negotiated grievance procedures

In order to protect the due process rights of managers and supervisors, this section amends 5 U.S.C. § 7121 to eliminate the requirement that arbitrators" have the authority to require agencies to discipline an individual in a case involving an alleged prohibited personnel practice. This section takes effect on the date of enactment and applies with respect to orders issued on or after that date notwithstanding the provisions of any collective bargaining agreement.

Section 206. Collection and reporting of training information

This section requires OPM to collect information concerning training programs, plans, and methods utilized by federal agencies and submit an annual report to Congress. OPM may also collect information on nongovernmental training to the extent it considers appropriate in the public interest. On request, OPM may make such information available to an agency and to Congress.

TITLE III—ENHANCEMENT OF THRIFT SAVINGS PLAN AND CERTAIN OTHER BENEFITS

Subtitle A. Additional Investment Funds for the Thrift Savings plan

Section 301. Short title

The short title for this subtitle is the "Thrift Savings Investment Funds Act of 1996."

Section 302. Additional investment funds for the thrift savings plan

This section makes changes to 5 U.S.C. §8438 which are necessary to authorize the addition of the two new investment funds. The language is similar to that in section 8438 with respect to the Common Stock Index Investment Fund (C Fund), to which the two new funds bear the greatest resemblance. Like that fund, the two new funds are required to be index funds which invest in indices that represent certain defined sectors in the equity markets.

Section 302 makes changes necessary to add the two new funds to the list of those the Federal Retirement Thrift Investment Board is authorized to establish by subsection (b)(1) of section 8438. This is consistent with the statutory treatment of the current investment funds. The Board is given the responsibility to choose indices and establish investment funds that fall within the parameters for each fund as set forth in the statute.

The section also adds two new paragraphs to section 8438(b) which describe the parameters of the two new investment funds.

New paragraph (3) of section 8438(b) describes the requirements for the Small Capitalization Stock Index Investment Fund. The Board must choose a commonly recognized index that represents the market value of the United States equity markets, but excluding that portion of the equity markets represented by the common stocks included in the C Fund. It is intended therefore, that the Small Capitalization Stock Index Fund will be designed to replicate the performance of an index representing smaller capitalization stocks not held in the C Fund.

New paragraph (4) describes the requirements for the International Stock Index Investment Fund. The Board must choose a commonly recognized index that is a reasonably complete representation of the international equity markets. The term "international equity markets" excludes the United States equity markets, which are represented by the other funds.

Section 303. Acknowledgment of investment risk

Section 303 amends section 5 U.S.C. §8439(d), to add a reference to the two new investment funds in the section requiring each Thrift Savings Plan TSP participant who invests in one of the enumerated funds sign an acknowledgment stating that he understands that the investment is made at the participant's own risk, that the government will not protect the participant against any loss on such investment, and that a return on the investment is not guaranteed by the government. As is the case with the C Fund and the Fixed Income Investment Fund, Small Capitalization Stock Index Fund and the International Stock Index Fund each carry the risk that an investment may lose value. Therefore, it is appropriate to require the participant to sign the same acknowledgment of risk statement prior to investing in either of these funds.

Section 304. Effective date

This subtitle will take effect on the date of enactment, and the two new funds it establishes will be offered for investment at the earliest practicable election period as determined by the Executive Director of the Federal Retirement Thrift Investment Board.

Subtitle B. Thrift Savings Account Liquidity

Subtitle B improves the liquidity of TSP accounts during employment and gives federal employees greater flexibility with their account upon separation. The amendment gives the Executive Director discretion to determine which accounts are so small that they should automatically be paid out upon separation. Finally, the proposed legislation would eliminate any need for and the existence of deferred TSP benefits, eliminating the current requirement that participants make an election as to how they wish to receive their account earlier than is required for all other retirement accounts under the Internal Revenue Code. Funds will simply remain on account until payment is requested by a participant (or beneficiary) required by law, or ordered by a court.

Section 311. Short title

The short title for this subtitle is the "Thrift Savings Plan Act of 1996."

Section 312. Notice to spouses for in-service withdrawals; de minimis accounts; Civil Service Retirement System participants

Section 312(l)(A) eliminates provisions allowing for a modification of the date of a withdrawal election after separation. Under this subtitle, elections for deferred payments are rendered unnecessary and eliminated. Consequently, the need to be able to modify the date of an election is no longer necessary. Funds will simply remain on account to be paid promptly upon request or to satisfy court-ordered or age-related payment requirements.

This section includes technical amendments expanding the notice available to spouses of CSRS employees to apply to the new in-service withdrawals in the same manner it currently applies to loans.

Subsection (2)(A) would eliminate the requirement that the Executive Director automatically pay, upon separation, a non-forfeitable account balance of $3,500 or less where a CSRS employee fails to make a valid withdrawal election. This change would permit the Executive Director to determine a de minimis amount below which the account will automatically be disbursed.

Section 313. In-service withdrawals; de minimis Accounts; Civil Service Retirement System participants

Section 313 allows TSP participants additional access to their TSP accounts at separation by permitting more than one type of withdrawal election and prior to separation by adding two in-service withdrawal features. Access to TSP funds upon separation is currently limited to one of three options; the legislation would permit mixed withdrawal elections. Similarly, access to TSP funds before separation is currently limited by law to loans. Such loans are further limited by the requirement that they be approved only for the specific purposes enumerated in the statute. The legislation would remove these purpose tests. Further, it eliminates elections for deferred withdrawal payments.

This section would eliminate the present statutory restriction which permits participants to select only one method of withdrawal payment upon separation. Subsection (a) would allow the Executive Director to offer, by regulation, a separated employee the opportunity to select one or more of the presently approved withdrawal options. It would add the option to a separated employee to make a one-time withdrawal or transfer of any or all of an account in addition to the options provided in subsection (a).

Subsection (a)(3) would eliminate the requirement that the Executive Director automatically pay, upon separation, a nonforfeitable account balance of $3,500 or less, as was done for CSRS employees in section 1(c).

Subsection (a)(3) would also change the date by which a separated participant must make a withdrawal election. Employees who separate from service have a number of withdrawal options. Currently, the statute provides that the TSP must purchase an annuity if the participant has not made a valid withdrawal election by February 1 of the year following the latest of (1) the year in which the participant turns age 65, (2) the tenth anniversary of the year in which the employee became subject to the provisions of FERSA, or (3) the employee's separation from service. Because the ten-year

anniversary of the Plan occurs in 1997, this provision would first take effect next year.

The purpose of the current provision is not clear, but it may already have caused many participants to become confused regarding TSP withdrawals. The change made by this subsection will eliminate this arbitrary deadline and simply require that annuity payments be made by April 1 of the year following the later of the year in which the employee turns age 70½ or the employee's separation from service, unless a withdrawal election is made before that time.

Subsection (a)(5) simplifies and expands the current TSP loan program by eliminating the present "purpose" restrictions on loans. Currently, loan applicants must show that they qualify for a loan under one of four purposes enumerated in the law. The proposed change would remove this restriction and authorize certain withdrawals.

Subsection (a)(6) would allow employees the option to withdraw all or a portion of their vested funds prior to separation provided they have attained age 59½. Employees are generally considered to be of retirement age when they reach age 59½. Consequently, they are permitted to withdraw retirement funds without the early withdrawal penalty imposed on other in-service withdrawals by the Internal Revenue Code.

Subsection (a)(6) would also allow participants of any age to withdraw their own contributions and associated earnings prior to separation if they are able to demonstrate a financial hardship. Such a withdrawal is a taxable distribution subject to an early withdrawal penalty under the Internal Revenue Code for those persons under age 59½. Thus, such withdrawals are clearly discouraged but would not be prohibited where there is a clear and demonstrable need.

Subsection (b) would invalidate elections with deferred payment dates that have not been executed once participants are eligible to submit an election at any time for immediate payment.

Section 314. Survivor annuities for former spouses; notice to Federal employees retirement system spouses for in-service withdrawals

Section 314 contains technical amendments eliminating references to changes of a withdrawal election and expanding the notice and consent portions of the statute available to spouses of FERS employees to apply to the new in-service withdrawals in the same manner they currently apply to loans.

Section 315. De minimis accounts relating to the judiciary

Section 315 would eliminate the requirement that the Executive Director automatically pay, upon separation, a nonforfeitable account balance of $3,500 or less where FERS employees who are justices or judges as defined by section 451 of title 28, bankruptcy judges and magistrates, or Court of Federal Claims judges, fail to make a valid withdrawal election, as was done for CSRS and other FERS employees.

Section 316. Definition of basic pay

Eliminating the special definition of basic pay would have the effect of applying to the TSP the same basic pay calculation that ap-

plies to amounts contributed to the FERS and CSRS defined benefit programs. The current definition of basic pay for TSP purposes found at 5 U.S.C. §8341 authorizes the use of the "uncapped" rate of pay as it relates to Federal Wage System employees. This unique definition has caused unnecessary confusion and errors in calculations by employing agencies. Each year since 1988 Congress has approved legislative language requiring that the actual rate of basic pay be substituted for the special definition. The elimination of the special definition of basic pay for TSP purposes makes this change permanent.

Section 317. Eligible rollover distributions

This section amends 5 U.S.C. §8432 to permit employees and members to transfer to the TSP his or her account balance from a plan qualified under section 401(a) or 408(b) of the Internal Revenue Code or an Individual Retirement Arrangement (IRA) qualified under sections 408(a) or 408(b) to the TSP. Such transfers are not permitted under current law. It is not clear why Congress did not permit such rollovers. Perhaps Congress wanted to insulate the TSP from defects which may be found in other qualified plans. For example, prior to 1992 it was unclear whether the joint and survivor annuity rules would apply to a transfer of funds from a transferror plan. Recent changes in the tax law, i.e, the Unemployment Compensation Act of 1992, Pub. L. 102–318, 106 Stat. 290 (1992), and final regulations issued by the IRS interpreting it, have clarified the rules applicable to transfers and rollovers. Under those regulations, the TSP will not be subject to rules which are applicable to the transferror plan or IRA. It now appears that the provisions of the Internal Revenue Code (and IRS regulations) encourage the type of transaction contemplated by this section.

Section 318. Effective date

This subtitle shall take effect on the date of enactment. Changes in the withdrawals, loans, rollovers, and elections as provided under the amendments made by this subtitle will be made at the earliest practicable date as determined by the Executive Director.

Subtitle C. Other Provisions Relating to the Thrift Savings Plan

Section 321. Percentage limitation on contributions

Under current law, those who participate in the TSP may not contribute more than a fixed percentage of their basic pay. The caps are either 10% or 5%, depending upon their positions or whether they are in the FERS or CSRS retirement plans. This section eliminates those caps, which would permit individuals to contribute up to the limit established by the Internal Revenue Service. This section shall take effect 6 months after enactment or at such earlier date the Executive Director may prescribe by regulation.

Section 322. Loans under the thrift savings plan for furloughed employees.

This section amends 5 U.S.C. § 8433(g) to provide that an employee who has been furloughed due to a lapse in appropriations

may not be denied a loan from the TSP solely because he or she is not in a pay status.

Section 323. Immediate participation in the thrift savings plan

This section amends 5 U.S.C. § 8432 (b) to eliminate statutorily required waiting periods before employees and Members may contribute to the TSP. Under this section, such individuals shall be eligible to contribute on the day they begin service or, if that is not administratively feasible, on the earliest date thereafter that the Executive Director determines to be feasible.

Subtitle D. Resumption of Certain Survivor Annuities That Terminated by Reason of Marriage

Section 331. Resumption of certain survivor annuities that terminated by reason of marriage

This section amends 5 U.S.C. §§ 8341(e) and 8443(b) to provide for the reinstatement the survivors annuity of a child that is terminated by reason of marriage if that marriage ends by death of the spouse, divorce, or annulment. The annuity is to resume on the first day of the month in which the marriage ends if (1) the individual repays any lump sum paid and (2) the individual is not otherwise ineligible for such annuity.

This section also amends 5 U.S.C. § 8908 that a child whose survivor annuity is terminated by reason of marriage and then restored may enroll in a health benefits plan under sections 8903 or 8903a if such individual was covered by such a plan immediately before the annuity was terminated.

The amendments made by this section shall apply to any termination of marriage taking effect before, on, or after the date of enactment. However, no annuities shall be payable retroactively.

Subtitle E. Life Insurance Benefits

Section 341. Domestic relations orders

This section amends 5 U.S.C. § 8705 to provide that death benefits payable under a group life or group accidental death insurance policy in effect on the date of an employee's death shall be subject to a court decree of divorce, annulment, or legal separation, or the terms or any court order or court-approved property settlement agreement incident to a decree of divorce, annulment, or legal separation. The decree, order, or agreement shall not be effective unless it is received before the date of the employee's death by the employing agency or, if the employee has separated from service, by OPM. A designation under such a decree, order, or agreement may not be changed unless written consent of the designee or a modification of the decree, order, or agreement is received before the date of the employee's death by the employing agency or, if the employee has separated from service, by OPM. OPM shall issue regulations to implement this section, including regulations governing the receipt of 2 or more decrees, orders, or agreements with respect to the same amount.

This section also amends 5 U.S.C. § 8706 to provide that a court decree of divorce, annulment, or legal separation, or the terms of

a court-approved property settlement agreement incidental to such decree may direct an employee or former employee to make an irrevocable assignment of such individual's insurance policy to a person specified in the court order or court- approved settlement agreement.

Section 342. Exception from provisions requiring reduction in additional optional life insurance

Under existing law, employees who retires on an immediate annuity or who become entitled to workers' compensation under subchapter I of chapter 81 of title 5 may continue to purchase additional optional life insurance. But the amount of that insurance is reduced 2% per month at the beginning of the second month following the employees 65th birthday. This section amends 5 U.S.C. § 8714b to eliminate that mandatory reduction if at the time of retirement a permanently disabled individual is designated to receive the entire amount of such insurance and the employee has made a timely election. However, the mandatory reduction shall nevertheless be made if: (1) the additional optional insurance is not paid to the individual designated at the time of retirement, (2) OPM finds that adequate arrangements have not been made to ensure that the insurance will be used only for the care and support of that individual, or (3) the election terminates at any time before the death of the insured individual.

Whether an individual is permanently disabled shall be determined by regulations to be issued by OPM based upon subparagraphs (A) and (C) of section 16414(a)(3) of the Social Security Act.

The insured individual must also elect at the time and in the manner required by regulations issued by OPM to continue to have the full cost of the unreduced additional optional insurance withheld from such individual's annuity or compensation after reaching age 65. The election (and withholdings) shall terminate if the insured individual revokes the election or changes the beneficiary designated under 5 U.S.C. § 8705 at the time or retirement. It shall also terminate if OPM determines that any of the requirements or conditions for unreduced additional optional insurance are, at any time, no longer met.

This section shall take effect on the date of enactment. OPM shall issue regulations under which individuals already separated from service may also elect unreduced additional optional insurance within 1 year after the date of enactment. Such an individual is eligible to make an election if the individual separated no more than 50 months before the date of enactment and would have been eligible to make an election on the date of separation (or, if earlier, the last day for making an election based upon that separation) if the amendments made by this section (and implementing regulations) had been in effect. If such individual makes an election, the appropriate amounts shall be withheld from the individual's annuity or compensation. If benefits are paid as a result of such election upon the death of the insured, the amount shall be reduced to reflect the additional amount that would have been withheld had the amendments made by this section (and implementing regulations) been in effect.

OPM is required to notify current and former federal employees of the enactment of this section and any benefits for which they might be eligible under it by publication in the Federal Register and such other methods as OPM considers appropriate. The notification shall also describe the procedures for electing unreduced additional optional insurance.

TITLE IV—REORGANIZATION FLEXIBILITY

Section 401. Voluntary reductions in force

This section amends 5 U.S.C. § 3502(f) to provide additional flexibility to agencies undergoing a reduction in force. It grants to all agencies authority previously granted only to the Department of Defense to allow employees to volunteer to be separated rather than in a reduction in force. The agency may retain an individual in a similar position who would have been reached in the RIF. The separation of a volunteer shall be treated as involuntary for all purposes other than advance notice and participation in a priority placement program. An agency head may prohibit an individual with critical knowledge or skills from volunteering if the agency head determines that his or her separation would impair the performance of the agency's mission. The authority granted by this section may not be exercised after September 31, 2001.

Section 402. Nonreimbursable details to Federal agencies before a reduction in force

This section amends 5 U.S.C. § 3341 to permit one agency to detail an employee who has received a specific RIF notice or who is likely to be separated in a RIF to another agency on a nonreimbursable basis. The detail may not exceed 90 days, and it may not be renewed. The purpose of this section is to allow an employee who is likely to be separated in a RIF to demonstrate the ability to perform another job. This section is effective 30 days after the date of enactment.

TITLE V—SOFT-LANDING PROVISIONS

Section 501. Temporary continuation of Federal employees' life insurance

This section amends 5 U.S.C. § 8706 to permit employees who are separated due to a RIF or who voluntarily separate from a surplus position to continue their group life insurance for up to 18 months after the date of separation. The employee must pay both the employee's and agency's share of the premium and an amount not to exceed 2% to cover administrative expenses. This authority applies to separations occurring on or after the date of enactment but before October 1, 2001. However, with respect to an employee who has received a specific RIF notice before October 1, 2001, the authority extends to separations occurring before February 1, 2002.1

Section 502. Continued eligibility for health insurance

This section amends 5 U.S.C. § 8905 to allow certain employees who are separated in a RIF or who voluntarily separate from a surplus position to continue their health insurance under the Federal Employees Health Benefits Program. Subsection (a) applies to em-

ployees who retire on an immediate annuity based on such separations. It requires OPM to waive the requirement in section 8905(b) that the employee have been enrolled in an FEHBP plan for specific periods of time before retirement. Instead such employees will be eligible if they are enrolled in an FEHBP plan immediately before retirement. This authority applies to separations occurring on or after the date of enactment but before October 1, 2001. However, with respect to an employee who has received a specific RIF notice before October 1, 2001, the authority extends to separations occurring before February 1, 2002.

Subsection (b) extends government wide a benefit previously available only to employees of the Department of Defense. Under it, an employee who is involuntarily separated due to a reduction in force or who voluntarily separates from a surplus position may elect to continue an FEHBP plan for a period of 18 months after the date of the separation. The former employee is required to pay only the employee's share of the premium. The former employing agency pays the remainder.

Section 503. Priority placement programs for Federal employees affected by a RIF

This section adds a new section 3330a to title 5, United States Code, which requires agencies to establish agencywide priority placement programs within 3 months of the date of enactment. The priority placement programs shall facilitate employment placement for employees who are scheduled to be separated due to a RIF or who have been separated in a RIF. To participate in the program, an employee (other than one in a position excluded by law from a performance appraisal system) must have received a rating of fully successful (or equivalent) as their last rating of record. An individual loses eligibility for reemployment priority under this section if he or she requests removal in writing, accepts or declines a bona fide offer of employment (or fails to accept within the time permitted), or separates from the agency before being separated by the RIF.

Agencies may not fill vacant positions from outside the agency if there is a qualified employee or former employee on the priority placement list, and they must apply veterans" preference when placing employees who are on the list.

Section 504. Job placement and counseling services

This section authorizes agencies to establish job placement and counseling services for current and former employees. These programs may include career and personal counseling, training in job search skills, and job placement assistance. Services authorized by this section may be provided to current employees of the agency or former employees who have been separated (other than for cause) for less than 1 year. An agency may also offer such services to current or former employees of another agency with the permission of that other agency. The costs of services provided to current or former employees of another agency shall be reimbursed by that agency.

Section 505. Education and retraining incentives

This section authorizes agencies to pay retraining incentives, relocation incentives, and educational assistance on behalf of an individual who is involuntarily separated from a position, or an individual voluntarily separated from a surplus position, due to a reduction in force.

An agency head may enter into an agreement with a non-federal employer who agrees to employ an eligible employee for at least 12 months and to certify to the agency head any costs incurred by the employer in retraining such individual. The agency head shall pay a retraining incentive, in an amount prescribed by the agency head but in no event greater than the amount certified by the non-federal employer, upon the employee's completion of 12 months of continuous employment. The agency head shall pay a pro rated retraining incentive if the employee is employed by the non-federal employer for at least 6 months but less than 12.

An agency head may also pay a relocation incentive to an eligible employee if it is necessary for the employee to relocate to begin employment with a non-federal employer. The amount of the relocation incentive is limited to the amount payable to relocate a federal employee who transfers between the same locations.

Educational assistance may only be paid on behalf of full-time permanent employees who have completed at least 3 years of current continuous service in any executive agency or agencies and been admitted to an institution of higher education within 1 year after separation.

The total amount spent on behalf of an individual under this section may not exceed $10,000. In addition, the amount of educational assistance available to employees is further limited to $8,000 if the employee has at least 4 but less than 5 years of qualifying service and $6,000 if the employee has at least 3 but less than 4 years of qualifying service. (The term "qualifying service" means service performed as an employee within the meaning of 5 U.S.C. § 2105 on a permanent full-time or permanent part-time basis. Part-time service shall be counted on a pro rated basis.) Retraining and relocation payments shall be paid from appropriations or other funds available to the agency for training. Educational assistance shall be paid from appropriations or other funds which would have been used to pay the employee's salary.

Retraining and relocation incentives may not be paid for retraining or relocation commencing after June 30, 2002. Educational assistance may not be paid later than 10 years after the employee's separation.

TITLE VI—MISCELLANEOUS

Section 601. Reimbursements relating to professional liability insurance

This section authorizes an agency head to reimburse law enforcement officers, supervisors, managers, or any other employee the agency head considers appropriate, for up to 50% of the costs incurred by the employee for professional liability insurance. Reimbursements shall be paid from funds appropriated for the payment of salaries and expenses of government employees. Professional li-

ability insurance subject to this section shall have policy limits of $1,000,000 per occurrence per year for legal liability and $100,000 for the cost of legal representation per occurrence per year.

Section 602. Employment rights following conversion to contract

This section provides that contractors shall in good faith offer the right of first refusal of employment to qualified employees whose positions are abolished because an activity has been contracted out. However, the contractor is not required to make such an offer to an employee who, in the 12 months preceding the conversion, has been the subject of an adverse personnel action related to misconduct or received a less than fully successful performance rating. No employee shall have the right to more than 1 offer under this section based upon a particular separation due the contracting of an activity. The President shall issue regulations to carry out this section.

Section 603. Debarment of health care providers found to have engaged in fraudulent practices

Subsection (a) amends current Federal Employees Health Benefits (FEHB) law at 5 U.S.C. 8902a to remove unnecessary administrative constraints on, and otherwise improve, the Office of Personnel Management's (OPM) authority to bar FEHB Program participation by, and impose monetary penalties on, health care providers who engage in professional or financial misconduct. The proposal would make these FEHB provisions conform more closely with administrative sanctions authority for the Medicare Program (42 U.S.C. 1320a–7 and 1320a–7a), with regard to causes for imposing sanctions and the general availability of post-termination appellant rights, as was originally intended.

The eight clauses in subsection (a) amend 5 U.S.C. § 8902a—

(1) in § 8902a(a)(2)(A), to make a conforming amendment;

(2) in § 8902a(b), to make OPM's authority to bar providers convicted of criminal misconduct described in (b)(1) through (4) mandatory, rather than permissive; strike existing provisions in (b)(5), in order to move the text to the new § 8902a(c); and add a new paragraph (b)(5) which reflects OPM responsibilities for reciprocal debarments under the Governmentwide Non-procurement Debarment and Suspension Common Rule authorized by Executive Order 12549 and OPM implementing regulations issued May 17, 1993;

(3) to redesignate § 8902a(c) through (i), as (d) through (j), and add a new § 8902a(c) concerning permissive authority for OPM to exclude providers from FEHB participation; the new subsection (c) continues discretion to impose programwide debarment on providers subject to licensure restrictions in any state for substantive misconduct, and adds provisions relating to entities owned or controlled by an FEHB-sanctioned provider, to providers who submit FEHB claims involving excessive fees or inappropriate care, and to those providers who engage in conduct that could be subject to monetary penalties under subsection (d); this subsection parallels Medicare sanction authority (42 U.S.C. 1320a–7(b)) and intends for OPM to consider the seriousness of the conduct involved, nexus to

FEHB operations, and other mitigating circumstances, in invoking this authority;

(4) in § 8902a(d)(1), as redesignated (relating to OPM authority to impose civil monetary penalty, assessment, and exclusion on providers) to more closely parallel Medicare provisions for civil monetary penalties; provisions now in clause (d)(1)(B) would be moved to section 8902a(c)(3) (under section 2(3) of the bill) because they relate to patterns of abuse for which debarment is more appropriate; two new clauses under (d)(1) would permit sanction of providers who knowingly violate applicable Medicare charge limitations under § 8904(b) (for services provided to retired FEHB enrollees age 65 or older who lack Medicare part A or part B eligibility) or who continue to submit claims under the FEHB Program while subject to debarment;

(5) in § 8902a(f), as redesignated, to make a conforming change in OPM authority for setting conditions of debarment to reflect mandatory debarment requirements under §8902a(g)(3);

(6) in § 8902a(g), as redesignated, to amend paragraph (g)(1) concerning the effective date of debarment, to specify that action to exclude a provider from FEHB participation would generally be enforceable after reasonable notice to affected parties, and would confer a right for the provider to request a post-termination hearing as provided in § 8902a(h)(1); only in cases involving an adverse determination relative to misconduct which warrants monetary penalties under this section would the affected provider receive written notice and an opportunity for such determination to be made after a hearing under § 8902a(h)(1); these provisions parallel the availability of appellant rights for excluded providers under Medicare law [42 U.S.C. 1320a–7(f)]; in paragraph (g)(3), to require a mandatory 3-year exclusion from FEHB for providers convicted of a criminal offense (unless OPM determines that special community needs justify a shorter period);

(7) in § 8902a(h)(1), as redesignated, to strike provisions which currently require that any adverse determination under this section must be made on the record after a formal evidentiary hearing, and instead provide a basic right for adversely-affected parties to request a hearing by a neutral hearing officer as designated by OPM's Director, the timing of the hearing to be determined under § 8902a(g)(1) as amended; in cases of mandatory debarments under subsection (b) based on a criminal conviction or debarment by another Government program for specified causes, due process requirements would likely not require a further hearing under this subsection; the nature of facts that could be expected to be contested under appeals will essentially involve review of documentary claims evidence which will not be aided by formal, trial-like hearing procedures and prompt removal of unfit providers promotes FEHBP enrollee welfare and program efficiency; this hearing format is consistent with OPM practice with respect to withdrawal of approval of FEHB plans under 5 U.S.C. § 8902(e) [5 CFR § 890.204], debarment actions under the Governmentwide Non-procurement Debarment and Suspension Common Rule [5

CFR, Part 970], and proposed regulations to establish Governmentwide reciprocal effect across procurement and Non-procurement programs for debarment and suspension actions [59 FR 65607–25, Dec. 20, 1994]; § 8902a(h)(2) is also amended to provide for judicial review in the district courts of the United States due to the less formal administrative hearing process under (h)(1); and

(8) in § 8902a(i), as redesignated, to add a sentence to authorize withholding civil monetary penalties and assessments which OPM imposes under this section from any sum owed by the United States to the sanctioned party, as permitted under Medicare law (42 U.S.C. 1320a–7a(f)).

Except as provided below, the Act would be effective upon enactment:

New permissive authority under subsection 8902a(c) (2) and (4) for OPM to bar FEHB participation, in cases of entities owned or controlled by FEHB-sanctioned providers and in cases of providers who engage in conduct that could be subject to monetary penalties under subsection (d), would apply only to the extent that misconduct which is the basis for debarment under this subsection occurs after enactment of this Act.

Also, civil monetary penalties and assessments under subsection (d)(1)(B), for providers who violate Medicare charge limitations for purposes of 5 U.S.C. 8904(b), would apply in cases involving FEHB services furnished after enactment of this Act.

Finally, the minimum 3-year mandatory debarment specified by subsection 8902a(g)(3), as redesignated and amended by this Act, would only apply to debarments based on criminal convictions that occur after enactment of this Act.

Section 604. Conversion of certain excepted service positions in the United States Fire Administration to competitive service positions

This section requires the Director of the Federal Emergency Management Agency and the Director of OPM to convert certain faculty positions at the National Academy of Fire Prevention and Control before the date of enactment of this act to a competitive service position without prejudice to the employees in those positions. This conversion shall take effect on the first pay period for such positions beginning after the date of enactment. It also amends 7(c)(4) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. § 2206(c)(4)), effective on the date of enactment of this Act, to provide for appointments of faculty members to competitive service positions.

Section 605. Eligibility for certain survivor annuity benefits

This section requires OPM to approve survivor annuity benefits for a former spouse under 5 U.S.C. § 8341 who meets the 14 criteria enumerated in this section.

Section 606. Amendment to Public Law 104–134

This section amends paragraph (3) of section 3110(b) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996

(Public Law 104–134; 110 Stat. 1321–343) to require the United States Enrichment Corporation to make both the employee and agency contributions to the Thrift Savings Fund for those employees who elect to retain their coverage under the Civil Service Retirement System. This corrects an oversight in the Omnibus Consolidated Rescissions and Appropriations Act, which provided for such payments only on behalf of employees who retain their coverage under the Federal Employees' Retirement Service.

Section 607. Miscellaneous amendments relating to the health benefits program for Federal employees

Subsection (a) amends the definition of a carrier in the Federal Employees Health Benefits Program (FEHBP) to make clear that the government-wide Service Benefit Plan is sponsored by an association whose members are lawfully engaged in providing, paying for, or reimbursing the cost of group health plan functions and that the sponsor is the carrier.

Subsection (b) adds language to clarify that the carrier for the government-wide Service Benefit Plan need not contract with underwriting affiliates licensed in all of the states and the District of Columbia. The carrier for this plan contracts with its local affiliates to underwrite the plan.

Subsection (c) confirms the intent of Congress (1) that FEHBP contract terms which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) completely displace state or local law relating to health insurance or plans and (2) that this preemption authority applies to FEHBP plan contract terms which relate to the provision of benefits or coverage, including managed care programs.

Section 608. Pay for certain positions formerly classified at GS–18

This section provides that the rate of basic pay for positions classified at the GS–18 level on the date of enactment of the Federal Employees Pay Comparability Act of 1990 shall be set and maintained at a rate equal to the highest rate of basic pay for the Senior Executive Service under 5 U.S.C. § 5382(b).

Section 609. Repeal of section 1307 of title 5, United States Code

This section repeals an obsolete provision of title 5.

Section 610. Mandatory internal alternative dispute resolution procedures

This section authorizes federal agencies to develop mandatory alternative dispute resolution procedures covering certain employee complaints. The complaints covered are:

any matter reviewable by the Office of Special Counsel;

any matter (other than retirement) appealable to the Merit Systems Protection Board;

and complaints of discrimination under—

section 717 of the Civil Rights Act of 1964,

section 6(d) of the Fair Labor Standards Act of 1938,

section 501 of the Rehabilitation Act of 1973,

sections 12 and 15 of the Age Discrimination in Employment Act of 1967,

and rules, regulations, or policy directive under these laws.

The Federal Mediation and Conciliation Service, in conjunction with the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the Office of Special Counsel, and the Office of Personnel Management, shall issue guidelines to assist agencies in developing such alternative dispute resolution procedures.

V. Compliance With Rule XI

Pursuant to rule XI, clause 2(l)(3) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings from committee oversight activities are incorporated in the bill and this report.

VI. Budget Analysis and Projections

Pursuant to the provisions of section 308(a) of the Congressional Budget Act, the enactment of H.R. 3841 is estimated to reduce revenues by approximately $1.6 billion over fiscal years 1997–2002, authorizes $2 million in new budget authority, and provides new spending authority of approximately $6 million.

VII. Estimated Cost of Legislation

A copy of the cost estimate by the Congressional Budget Office follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 16, 1996.

Hon. William F. Clinger, Jr.,
Chairman, Committee on Government Reform and Oversight,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3841, the Omnibus Civil Service Reform Act of 1996.

Because enacting this legislation would affect both direct spending and receipts, pay-as-you-go procedures would apply.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

June E. O'Neill,
Director.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3841.
2. Bill title: The Omnibus Civil Service Reform Act of 1996.
3. Bill status: As ordered reported by the House Committee on Government Reform and Oversight on July 25, 1996.
4. Bill purpose: H.R. 3841 would make many changes to laws that effect the hiring, retention, payment, and reduction in force of federal personnel, as well as the health, retirement, and life insurance benefits available to these employees.

5. Estimated cost to the Federal Government: Enacting H.R. 3841 would affect revenues, direct spending, and spending that is subject to appropriations action. The bill's most significant budgetary effect would be the loss of certain income tax revenues. The Joint Committee on Taxation (JCT) estimates that enacting this bill would decrease revenues by about $1.6 billion over the 1997–2002 period by allowing federal employees to increase the amount of their contributions to the Thrift Savings Plan (TSP) and by allowing new employees to make contributions sooner. An increase in contributions would decrease revenues from federal income taxes because income used for such contributions is not taxed until it is withdrawn from the plan.

CBO estimates that enacting H.R. 3841 would increase direct spending by about $1 million each year over the 1997–2002 period by allowing a child who is a survivor of a federal employee and whose marriage ends to reclaim benefits under the Civil Service Retirement System (CSRS) and Federal Employees' Retirement System (FERS), as long as that child is otherwise eligible under current law.

Finally, the bill would increase discretionary costs, subject to the appropriation of necessary funds. CBO estimates that the Office of Personnel Management (OPM) and the General Accounting Office (GAO) would incur costs of about $2 million in 1997 to devise regulations and report on the bill's provisions. Because several of the bill's provisions would provide optional authorities to agencies, and because we have no basis for estimating the extent that agencies would use such authorities, CBO cannot estimate the total increase in discretionary costs that would arise from enacting H.R. 3841.

The following table summarizes the estimated impact of H.R. 3841 on revenues and direct spending over the 1997–2002 period.

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
CHANGE IN REVENUES [1]						
Estimated revenues	−83	−268	−306	−311	−316	−322
DIRECT SPENDING						
Spending under current law:						
Civilian retirement benefits:						
Estimated budget authority	41,146	43,067	45,057	47,062	49,149	51,316
Estimated outlays	41,064	42,980	44,967	46,968	49,051	51,214
Proposed changes:						
Estimated budget authority	1	1	1	1	1	1
Estimated outlays	1	1	1	1	1	1
Projected spending under H.R. 3841:						
Civian retirement benefits						
Estimated budget authority	41,147	43,068	45,058	47,063	49,150	51,317
Estimated outlays	41,065	42,981	44,968	46,969	49,052	51,215

[1] Estimate prepared by the Joint Committee on Taxation.

Note: Enacting H.R. 3841 also would increase spending subject to appropriation, but CBO cannot estimate the extent of such effects.

The costs of this bill fall within budget function 800.

6. Basis of estimate:

Revenues

Increase in the Limit on TSP Contributions.—The largest budgetary impact of this bill would stem from the provisions of Title III

that would increase the maximum amount of money some federal employees could contribute to the TSP. Under current law, employees enrolled in FERS can contribute up to 10 percent of their salary to the TSP on a pre-tax basis, as long as that dollar amount is less than the IRS limit for 401(k) plans, which currently is $9,500 a year. The limit for employees enrolled in CSRS is 5 percent of salary. Section 321 would eliminate the 10 percent and 5 percent of salary restrictions and allow employees to contribute up to the IRS limit for 401(k) plans, regardless of salary.

Employee contributions to the TSP reduce an employee's taxable income. Therefore, this proposal would reduce federal revenue if people increase their contributions to the TSP. The Joint Committee on Taxation estimates that the provision would result in a loss in revenue of $64 million in 1997 and $1.1 billion over the 1997–2002 period.

According to the General Accounting Office, about 800,000 federal employees enrolled in FERS are eligible to contribute to the TSP. About 7 percent of the 800,000 employees contribute at the maximum rate of 10 percent. About 850,000 employees in CSRS are eligible to contribute to the TSP, and about 68 percent of these employees contribute at the maximum rate of 5 percent. JCT assumes that a majority of the employees in both FERS and CSRS who currently contribute at the maximum allowable level would increase their contributions by some amount.

New Hires Allowed to Participate in TSP Sooner.—Section 323 would allow new hires under FERS to contribute immediately to the TSP. Under current law, new employees must wait two open seasons until they can participate in the TSP. Under this proposal, the timing of the agency contributions would not change—agencies would still begin to make contributions to an employee's TSP after the employee waits two open seasons. JCT estimates that the federal government would forgo tax revenues of about $19 million in 1997 and $516 million over the 1997–2002 period from enacting this provision. Data from OPM indicates that about 375,000 employees are hired each year who would become eligible to contribute immediately to the TSP. JCT assumes that the rate of participation for new employees would approximate the current rate of 77.2 percent for all federal employees, as reported by the Federal Retirement Thrift Investment Board. The slight increase in the amount of revenue loss for the years 2000 through 2002 reflects the net effect of rising employee salaries and declining federal employment.

Other Provisions.—Section 205 would remove the authority under current law for arbitrators to impose a range of penalties on managers found in violation of prohibited personnel practices during binding arbitration. The disciplinary actions available to the arbitrator include the removal from employment, a reduction in grade, suspension, reprimand, or the imposition of a civil monetary penalty of up to $1,000. Based on information provided by the Merit Systems Protection Board, civil monetary penalties, which are classified as revenues, have rarely been imposed in such cases. Consequently, CBO estimates that the repeal of this authority would have no significant effect on revenue.

Section 302 would add two new investment funds to those currently offered by the Thrift Savings Fund: a small capitalization stock index fund and an international stock index fund. Further, the bill would provide current and former federal employees greater flexibility with their Thrift Savings Plan accounts and would expand the options for withdrawals. These provisions would make TSP more attractive to federal employees and would tend to increase participation in the plan. Increased participation in TSP would reduce federal income tax revenues, because federal employees contribute portions of their salaries to TSP on a pre-tax basis. On the other hand, the bill would increase tax revenues by accelerating taxable disbursements from TSP. CBO estimates that the bill would increase participation in TSP only modestly, and that the resulting effects on the federal budget would be small.

Direct spending

Section 331 would restore child survivor benefits under CSRS and FERS for individuals whose marriage ends (whether by death of the spouse, divorce, or annulment), as long as that child survivor meets all current law criteria for benefits. Under current law, once a child survivor marries, benefits are permanently terminated even if the marriage ends.

According to OPM, an average of about 110 child survivors lose benefits each year due to marriage. Based on data from the Bureau of the Census, CBO estimates that almost half of the roughly 400 child survivors who married before enactment of this bill and who otherwise still qualify for benefits have divorced. At an average benefit of about $4,800, the increase in direct spending would total about $1 million annually for the 1997–2002 period. The estimated cost remains roughly constant because in each year some of the divorced child survivors whose benefits are restored would become ineligible for benefits because they reach age 18 (or age 22 if they are in school) while newly divorced child survivors would have their benefits restored.

Section 606 would allow certain former spouses of deceased annuitants to receive survivor benefits under CSRS. Although this proposal creates a new class of individuals who can be eligible for survivor benefits, the proposal requires that 14 restrictive criteria be met in order to qualify. According to OPM, this proposal attempts to provide relief to one individual who has unsuccessfully appealed for survivor benefits through the OPM appeals process and the courts. Although it is possible that additional individuals may qualify for benefits under the criteria in this bill, CBO estimates the cost to the government would be insignificant.

Spending subject to appropriation

H.R. 3841 also would increase discretionary costs, subject to the appropriation of necessary funds. For instance, CBO estimates that the bill would increase costs by about $2 million dollars in 1997 for OPM and GAO to comply with the bill's requirements for reporting and regulations.

The bill would require that all agencies establish a priority program for rehiring or reassigning employees who have been affected

or are likely to be affected by a reduction in force (RIF). In such cases, the agency would be required to offer an eligible current or former employee any comparable vacancy located within the commuting area that is no more than three grade levels below the last position held by the employee. According to OPM, the average number of RIFs per year from 1993 through 1995 was about 6,750. Since OPM already requires that agencies have a placement program similar to that required by the bill, CBO estimates that any additional costs would not be significant.

In addition, H.R. 3841 could increase costs if agencies elect to use several of the new authorities provided under the bill. For instance, the bill would allow agencies to enter into agreements with nonfederal employers whereby the agency agrees to pay the company a training payment not to exceed $10,000 if it employs a former worker in a compensated position for at least 12 months, and to reimburse employees for up to half the costs to carry certain professional liability coverage of as much as $1 million. Because we have no way of knowing to what extent agencies would offer such optional services to their employees, CBO cannot estimate the amount of additional costs that might arise.

In the case of the training payment, the additional costs could be significant if an agency, such as the Internal Revenue Service or the Department of Defense, had a RIF of several thousand employees. For example, if the $10,000 maximum payment were made for 1,000 employees a year, the annual costs would be $10 million. However, the ability of an agency to offer this benefit to employees affected by a RIF would depend on the availability of appropriated funds. In the case of offering professional liability coverage, it is unlikely that any increase in costs would be significant. Based on information provided by OPM, CBO expects that the premium for an insurance policy of about $1 million would be between $200 and $300. Thus, an agency would incur a cost of between $100 and $150 for its share of the policy's cost. CBO does not expect that the number of policies under H.R. 3841 would be sufficient to result in a significant increase in costs.

Finally, the bill includes several other provisions that could affect discretionary costs and might even result in savings. For instance, the bill's authority for agencies to adopt mandatory alternative dispute resolution (ADR) procedures could allow some agencies to streamline their existing process for settling certain complaints and grievances. Many executive branch agencies already utilize various methods of ADR. Data compiled by GAO indicates that the use of ADR tends to result in more efficient resolutions of disputes, although such conclusions are based mainly on anecdotal evidence. If greater use of ADR leads to more efficient dispute resolution, then agencies could realize some savings. However, CBO does not have sufficient information to estimate the likelihood or magnitude of such potential savings.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting H.R. 3841 would affect both direct spending and receipts. The estimated pay-as-you-go impact is summarized in the following table.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	1	1
Change in receipts	0	−83	−268

8. Estimated impact on state, local, and tribal governments: H.R. 3841 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) and would have no impact on the budgets of state, local, or tribal governments.

9. Estimated impact on the private sector: The bill would impose no new private-sector mandates as defined in Public Law 104–4.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal Cost Estimate: Wayne Boyington, for costs related to retirement and life insurance benefits and John R. Righter, for other costs; Impact on State, local, and tribal governments: Theresa Gullo; Impact on the private sector: Matthew Eyles.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

VIII. Inflationary Impact Statement

In accordance with rule XI, clause 2(l)(4) of the Rules of the House of Representatives, this legislation is assessed to have no inflationary effect on prices and costs in the operation of the national economy.

IX. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

PART I—THE AGENCIES GENERALLY

* * * * * * *

PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

* * * * * * *

CHAPTER 13—SPECIAL AUTHORITY

Sec.
1301. Rules.
* * * * * * *
[1307. Minutes.]
* * * * * * *

[§ 1307. Minutes

[The Civil Service Commission shall keep minutes of its proceedings.]

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PART III—EMPLOYEES

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Subpart B—Employment and Retention

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CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

Sec.
3301. Civil service; generally.
3302. Competitive service; rules.
3303. Political recommendations.
* * * * * * *
3330a. Priority placement programs for employees affected by a reduction in force.

SUBCHAPTER III—DETAILS

[3341. Details; within Executive or military departments.]
3341. Details; within Executive agencies and military departments; employees affected by reduction in force.
* * * * * * *

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

* * * * * * *

§ 3330a. Priority placement programs for employees affected by a reduction in force

(a) Not later than 3 months after the date of the enactment of this section, each Executive agency shall establish an agencywide priority placement program, to facilitate employment placement for employees who—

(1) are scheduled to be separated from service due to a reduction in force under—

(A) regulations prescribed under section 3502; or

(B) procedures established under section 3595;

(2) are separated from service due to such a reduction in force; or

(3) have received a rating of at least fully successful (or the equivalent) as the last performance rating of record used for retention purposes (except for employees in positions excluded from a performance appraisal system by law, regulation, or administrative action taken by the Office of Personnel Management).

(b)(1) Each agencywide priority placement program under this section shall include provisions under which a vacant position shall not (except as provided in this subsection or any other statute providing the right of reemployment to any individual) be filled by the appointment or transfer of any individual from outside of that agency (other than an individual described in paragraph (2)) if—

(A) there is then available any individual described in paragraph (2) who is qualified for the position; and

(B) the position—

(i) is at the same grade or pay level (or the equivalent) or not more than 3 grades (or grade intervals) below that of the position last held by such individual before placement in the new position;

(ii) is within the same commuting area as the individual's last-held position (as referred to in clause (i)) or residence; and

(iii) has the same type of work schedule (whether full-time, part-time, or intermittent) as the position last held by the individual.

(2) For purposes of an agencywide priority placement program, an individual shall be considered to be described in this paragraph if such individual is—

(A) an employee of such agency who is scheduled to be separated, as described in subsection (a)(1); or

(B) an individual who became a former employee of such agency as a result of a separation, as described in subsection (a)(2), excluding any individual who separated voluntarily under section 3502(f).

(c)(1) If after a reduction in force the agency has no positions of any type within the local commuting areas specified in this section, the individual may designate a different local commuting area where the agency has continuing positions in order to exercise reemployment rights under this section. An agency may determine that such designations are not in the interest of the Government for the purpose of paying relocation expenses under subchapter II of chapter 57.

(2) At its option, an agency may administratively extend reemployment rights under this section to include other local commuting areas.

(d)(1) In selecting employees for positions under this section, the agency shall place qualified present and former employees in retention order by veterans' preference subgroup and tenure group.

(2) An agency may not pass over a qualified present or former employee to select an individual in a lower veterans' preference subgroup within the tenure group, or in a lower tenure group.

(3) Within a subgroup, the agency may select a qualified present or former employee without regard to the individual's total creditable service.

(e) An individual is eligible for reemployment priority under this section for 2 years from the effective date of the reduction in force from which the individual will be, or has been, separated under section 3502.

(f) An individual loses eligibility for reemployment priority under this section when the individual—

(1) requests removal in writing;

(2) accepts or declines a bona fide offer under this section or fails to accept such an offer within the period of time allowed for such acceptance; or

(3) separates from the agency before being separated under section 3502.

A present or former employee who declines a position with a representative rate (or equivalent) that is less than the rate of the position from which the individual was separated under section 3502 retains eligibility for positions with a higher representative rate up to the rate of the individual's last position.

(g) Whenever more than one individual is qualified for a position under this section, the agency shall select the most highly qualified individual, subject to subsection (d).

(h) The Office of Personnel Management shall issue regulations to implement this section.

SUBCHAPTER III—DETAILS

[§ 3341. Details; within Executive or military departments

[(a) The head of an Executive department or military department may detail employees among the bureaus and offices of his department, except employees who are required by law to be exclusively engaged on some specific work.

[(b)(1) Details under subsection (a) of this section may be made only by written order of the head of the department, and may be for not more than 120 days. These details may be renewed by written order of the head of the department, in each particular case, for periods not exceeding 120 days.

[(2) The 120-day limitation in paragraph (1) for details and renewals of details does not apply to the Department of Defense in the case of a detail—

[(A) made in connection with the closure or realignment of a military installation pursuant to a base closure law or an organizational restructuring of the Department as part of a reduction in the size of the armed forces or the civilian workforce of the Department; and

[(B) in which the position to which the employee is detailed is eliminated on or before the date of the closure, realignment, or restructuring.

[(c) For purposes of this section—

[(1) the term "base closure law" means—

[(A) section 2687 of title 10;

[(B) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note); and

[(C) the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); and

[(2) the term "military installation"—

[(A) in the case of an installation covered by section 2687 of title 10, has the meaning given such term in subsection (e)(1) of such section;

[(B) in the case of an installation covered by the Act referred to in subparagraph (B) of paragraph (1), has the meaning given such term in section 209(6) of such Act; and

[(C) in the case of an installation covered by the Act referred to in subparagraph (C) of that paragraph, has the meaning given such term in section 2910(4) of such Act.]

§ 3341. Details; within Executive agencies and military departments; employees affected by reduction in force

(a) The head of an Executive agency or military department may detail employees, except those required by law to be engaged exclusively in some specific work, among the bureaus and offices of the agency or department.

(b) The head of an Executive agency or military department may detail to duties in the same or another agency or department, on a nonreimbursable basis, an employee who has been identified by the employing agency as likely to be separated from the Federal service by reduction in force or who has received a specific notice of separation by reduction in force.

(c)(1) Details under subsection (a)—

(A) may not be for periods exceeding 120 days; and

(B) may be renewed (1 or more times) by written order of the head of the agency or department, in each particular case, for periods not exceeding 120 days each.

(2) Details under subsection (b)—

(A) may not be for periods exceeding 90 days; and

(B) may not be renewed.

(d) The 120-day limitation under subsection (c)(1) for details and renewals of details does not apply to the Department of Defense in the case of a detail—

(1) made in connection with the closure or realignment of a military installation pursuant to a base closure law or an organizational restructuring of the Department as part of a reduction in the size of the armed forces or the civilian workforce of the Department; and

(2) in which the position to which the employee is detailed is eliminated on or before the date of the closure, realignment, or restructuring.

(e) For purposes of this section—

(1) the term "base closure law" means—

(A) section 2687 of title 10;

(B) title II of the Defense Authorization Amendments and Base Closure and Realignment Act; and

(C) the Defense Base Closure and Realignment Act of 1990; and

(2) the term "military installation"—

(A) in the case of an installation covered by section 2687 of title 10, has the meaning given such term in subsection (e)(1) of such section;

(B) in the case of an installation covered by the Act referred to in subparagraph (B) of paragraph (1), has the meaning given such term in section 209(6) of such Act; and

(C) in the case of an installation covered by the Act referred to in subparagraph (C) of paragraph (1), has the meaning given such term in section 2910(4) of such Act.

* * * * * * *

CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

* * * * * * *

§ 3502. Order of retention

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

(1) * * *

* * * * * * *

(4) efficiency or performance [ratings.] *ratings, in conformance with the requirements of subsection (g).*

* * * * * * *

[(f)(1) The Secretary of Defense or the Secretary of a military department may—

[(A) release in a reduction in force an employee who volunteers for the release even though the employee is not otherwise subject to release in the reduction in force under the criteria applicable under the other provisions of this section; and

[(B) for each employee voluntarily released in the reduction in force under subparagraph (A), retain an employee in a similar position who would otherwise be released in the reduction in force under such criteria.

[(2) A voluntary release of an employee in a reduction in force pursuant to paragraph (1) shall be treated as an involuntary release in the reduction in force.

[(3) An employee with critical knowledge and skills (as defined by the Secretary concerned) may not participate in a voluntary release under paragraph (1) if the Secretary concerned determines that such participation would impair the performance of the mission of the Department of Defense or the military department concerned.

[(4) The regulations prescribed under this section shall incorporate the authority provided in this subsection.

[(5) The authority under paragraph (1) may not be exercised after September 30, 1996.]

(f)(1) The head of an Executive agency or military department may, in accordance with regulations prescribed by the Office of Personnel Management—

(A) separate from service any employee who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force, except for purposes of priority placement programs and advance notice.

(3) An employee with critical knowledge and skills (as defined by the head of the Executive agency or military department concerned) may not participate in a voluntary separation under paragraph (1)(A) if the agency or department head concerned determines that such participation would impair the performance of the mission of the agency or department (as applicable).

(4) The regulations prescribed under this section shall incorporate the authority provided in this subsection.

(5) No authority under paragraph (1) may be exercised after September 30, 2001.

(g)(1) The regulations prescribed to carry out subsection (a)(4) shall be the regulations in effect, as of January 1, 1996, under section 351.504 of title 5 of the Code of Federal Regulations, except as otherwise provided in this subsection.

(2) For purposes of this subsection—

(A) subsections (b)(4) and (e) of such section 351.504 shall be disregarded;

(B) subsection (d) of such section 351.504 shall be considered to read as follows:

"(d)(1) The additional service credit an employee receives for performance under this subpart shall be expressed in additional years of service and shall consist of the sum of the employee's 3 most recent (actual and/or assumed) annual performance ratings received during the 4-year period prior to the date of issuance of reduction-in-force notices or the 4-year period prior to the agency-established cutoff date (as appropriate), computed in accordance with paragraph (2) or (3) (as appropriate).

"(2) Except as provided in paragraph (3), an employee shall receive—

"(A) 5 additional years of service for each performance rating of fully successful (Level 3) or equivalent;

"(B) 7 additional years of service for each performance rating of exceeds fully successful (Level 4) or equivalent; and

"(C) 10 additional years of service for each performance rating of outstanding (Level 5) or equivalent.

"(3)(A) If the employing agency uses a rating system having only 1 rating to denote performance which is fully successful or better, then an employee under such system shall receive 5 additional years of service for each such rating.

"(B) If the employing agency uses a rating system having only 2 ratings to denote performance which is fully successful or better, then an employee under such system shall receive—

"(i) 5 additional years of service for each performance rating at the lower of those 2 ratings; and

"(ii) 7 additional years of service for each performance rating at the higher of those 2 ratings.

"(C) If the employing agency uses a rating system having more than 3 ratings to denote performance which is fully successful or better, then an employee under such system shall receive—

"(i) 5 additional years of service for each performance rating at the lowest of those ratings;

"(ii) 7 additional years of service for each performance rating at the next rating above the rating referred to in clause (i); and

"(iii) 10 additional years of service for each performance rating above the rating referred to in clause (ii).

"(D) For purposes of this paragraph, a rating shall not be considered to denote performance which is fully successful or better unless, in order to receive such rating, such performance must satisfy all requirements for a fully successful rating (Level 3) or equivalent, as established under part 430 of this chapter (as in effect as of January 1, 1996).'; and

(C) subsection (c) of such section shall be considered to read as follows:

"(c)(1) Service credit for employees who do not have 3 actual annual performance ratings of record received during the 4-year period prior to the date of issuance of reduction-in-force notices, or the 4-year period prior to the agency-established cutoff date for ratings permitted in subsection (b)(2) of this section, shall be determined in accordance with paragraph (2).

"(2) An employee who has not received 1 or more of the 3 annual performance ratings of record required under this section shall—

"(A) receive credit for performance on the basis of the rating or ratings actually received (if any); and

"(B) for each performance rating not actually received, be given credit for 5 additional years of service.".

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Subpart C—Employee Performance

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CHAPTER 43—PERFORMANCE APPRAISAL

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SUBCHAPTER I—GENERAL PROVISIONS

§ 4302. Establishment of performance appraisal systems

(a) * * *

(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for—

(1) * * *

* * * * * * *

[(5) assisting employees in improving unacceptable performance; and

[(6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.**]**

(5) assisting employees in improving unacceptable performance, except in circumstances described in subsection (c); and

(6) reassigning, reducing in grade, removing, or taking other appropriate action against employees whose performance is unacceptable.

(c) Upon notification of unacceptable performance, an employee shall be afforded an opportunity to demonstrate acceptable performance before a reduction in grade or removal may be proposed under section 4303 based on such performance, except that an employee so afforded such an opportunity shall not be afforded any further opportunity to demonstrate acceptable performance if the employee's performance again is determined to be at an unacceptable level.

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CHAPTER 45—INCENTIVE AWARDS

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SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

[§ 4501. Definitions

[For the purpose of this subchapter—

[(1) "agency" means—

[(A) an Executive agency;

[(B) the Library of Congress;

[(C) the Office of the Architect of the Capitol;

[(D) the Botanic Garden;

[(E) the Government Printing Office;

[(F) the government of the District of Columbia; and

[(G) the United States Sentencing Commission;

[but does not include—

[(i) the Tennessee Valley Authority; or

[(ii) the Central Bank for Cooperatives;

[(2) "employee" means—

[(A) an employee as defined by section 2105; and

[(B) an individual employed by the government of the District of Columbia; and

[(3) "Government" means the Government of the United States and the government of the District of Columbia.]

§ 4501. Definitions

For the purpose of this subchapter—

(1) the term "agency" means—

(A) an Executive agency;

(B) the Library of Congress;

(C) the Office of the Architect of the Capitol;

(D) the Botanic Garden;

(E) the Government Printing Office; and

(F) the United States Sentencing Commission;

but does not include—

(i) the Tennessee Valley Authority; or

(ii) the Central Bank for Cooperatives;

(2) the term "employee" means an employee as defined by section 2105; and

(3) the term "Government" means the Government of the United States.

* * * * * * *

[§ 4503. Agency awards

[The head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—

[(1) by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

[(2) performs a special act or service in the public interest in connection with or related to his official employment.]

§ 4503. Agency awards

(a) The head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—

(1) by his suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs a special act or service in the public interest in connection with or related to his official employment.

(b)(1) If the criteria under paragraph (1) or (2) of subsection (a) are met on the basis of the suggestion, invention, superior accomplishment, act, service, or other meritorious effort of a group of employees collectively, and if the circumstances so warrant (such as by reason of the infeasibility of determining the relative role or contribution assignable to each employee separately), authority under subsection (a) may be exercised—

(A) based on the collective efforts of the group; and

(B) with respect to each member of such group.

(2) The amount awarded to each member of a group under this subsection—

(A) shall be the same for all members of such group, except that such amount may be prorated to reflect differences in the period of time during which an individual was a member of the group; and

(B) may not exceed the maximum cash award allowable under subsection (a) or (b) of section 4502, as applicable.

* * * * * * *

§ 4505a. Performance-based cash awards

(a)(1) An employee whose most recent performance rating was [at the fully successful level or higher] *higher than the fully successful level* (or the equivalent thereof) may be paid a cash award under this section.

* * * * * * *

CHAPTER 47—PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

* * * * * * *

§ 4701. Definitions

(a) For the purpose of this chapter—

(1) "agency" means an Executive agency and the Government Printing Office, but does not include—

[(A) a Government corporation;]

[(B)] *(A)* the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the Central Imagery Office, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof which is designated by the President and which has as its principal function the conduct of foreign intelligence or counterintelligence activities; or

[(C)] *(B)* the General Accounting Office;

* * * * * * *

§ 4703. Demonstration projects

(a) * * *

[(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office shall—

[(1) develop a plan for such project which identifies—

[(A) the purposes of the project;

[(B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;

[(C) the number of employees or eligibles to be included, in the aggregate and by category;

[(D) the methodology;

[(E) the duration;

[(F) the training to be provided;

[(G) the anticipated costs;

[(H) the methodology and criteria for evaluation;

[(I) a specific description of any aspect of the project for which there is a lack of specific authority; and

[(J) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the project, or any part of the project as proposed;

[(2) publish the plan in the Federal Register;

[(3) submit the plan so published to public hearing;

[(4) provide notification of the proposed project, at least 180 days in advance of the date any project proposed under this section is to take effect—

[(A) to employees who are likely to be affected by the project; and

[(B) to each House of the Congress;

[(5) obtain approval from each agency involved of the final version of the plan; and

[(6) provide each House of the Congress with a report at least 90 days in advance of the date the project is to take effect setting forth the final version of the plan as so approved.]

(b) Before an agency or the Office may conduct or enter into any agreement or contract to conduct a demonstration project, the Office—

(1) shall develop or approve a plan for such project which identifies—

(A) the purposes of the project;

(B) the methodology;

(C) the duration; and

(D) the methodology and criteria for evaluation;

(2) shall publish the plan in the Federal Register;

(3) may solicit comments from the public and interested parties in such manner as the Office considers appropriate;

(4) shall obtain approval from each agency involved of the final version of the plan; and

(5) shall provide notification of the proposed project, at least 30 days in advance of the date any project proposed under this section is to take effect—

(A) to employees who are likely to be affected by the project; and

(B) to each House of the Congress.

(c) No demonstration project under this section may provide for a waiver of—

[(1) any provision of chapter 63 or subpart G of this title;]

(1) any provision of subchapter V of chapter 63 or subpart G of part III of this title;

* * * * * * *

[(3) any provision of chapter 15 or subchapter III of chapter 73 of this title;]

(3) any provision of chapter 15 or subchapter II or III of chapter 73 of this title;

* * * * * * *

[(d)(1) Each demonstration project shall—

[(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

[(B) terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond the date to the extent necessary to validate the results of the project.

[(2) Not more than 10 active demonstration projects may be in effect at any time.]

(d)(1) Each demonstration project shall terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue for a maximum of 2 years beyond the date to the extent necessary to validate the results of the project.

(2)(A) Not more than 15 active demonstration projects may be in effect at any time, and of the projects in effect at any time, not more than 5 may involve 5,000 or more individuals each.

(B) Individuals in a control group necessary to validate the results of a project shall not, for purposes of any determination under subparagraph (A), be considered to be involved in such project.

* * * * * * *

(h) The Office shall provide for an evaluation of the results of each demonstration project and its impact on improving public management. *The Office may, with respect to a demonstration project conducted by another agency, require that the preceding sentence be carried out by such other agency.*

(i) Upon request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken *by the Office* under subsection (h) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies.

(j)(1) If the Office determines that termination of a demonstration project (whether under subsection (e) or otherwise) would result in the inequitable treatment of employees who participated in the project, the Office shall take such corrective action as is within its authority. If the Office determines that legislation is necessary to correct an inequity, it shall submit an appropriate legislative proposal to both Houses of Congress.

(2) If the Office determines that a demonstration project should be made permanent, it shall submit an appropriate legislative proposal to both Houses of Congress.

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

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§ 5335. Periodic step-increases

(a) An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which his position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of—

(1) each 52 calendar weeks of service in pay rates 1, 2, and 3;

(2) each 104 calendar weeks of service in pay rates 4, 5, and 6; or

(3) each 156 calendar weeks of service in pay rates 7, 8, and 9;

subject to the following conditions:

(A) the employee did not receive an equivalent increase in pay from any cause during that period; and

(B) the [work of the employee is of an acceptable level of competence] *performance of the employee is at least fully successful* as determined by the head of the agency.

* * * * * * *

(c) When a determination is made under subsection (a) of this section that the [work of an employee is not of an acceptable level of competence,] *performance of an employee is not at least fully successful,* the employee is entitled to prompt written notice of that determination and an opportunity for reconsideration of the determination within his agency under uniform procedures prescribed by the Office of Personnel Management. [If the determination is affirmed on reconsideration, the employee is entitled to appeal to the Merit Systems Protection Board.] If the reconsideration [or appeal] results in a reversal of the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination. The authority of the Office to prescribe procedures [and the entitlement of the employee to appeal to the Board do not apply] *does not apply* to a determination of [acceptable level of competence] *fully successful work performance* made by the Librarian of Congress.

* * * * * * *

(g) For purposes of this section, the term "fully successful" denotes work performance that satisfies the requirements of section 351.504(d)(3)(D) of title 5 of the Code of Federal Regulations (as deemed to be amended by section 3502(g)(2)(B)).

* * * * * * *

CHAPTER 55—PAY ADMINISTRATION

* * * * * * *

SUBCHAPTER V—PREMIUM PAY

* * * * * * *

§ 5545a. Availability pay for criminal investigators

(a) * * *

* * * * * * *

(h) Availability pay under this section shall be—

(1) 25 percent of the rate of basic pay for the position; and

(2) treated as part of the basic pay for purposes of—

(A) sections 5595(c), 8114(e), 8331(3), [8431,] and 8704(c); and

* * * * * * *

Subpart F—Labor-Management and Employee Relations

CHAPTER 71—LABOR-MANAGEMENT RELATIONS

* * * * * * *

SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

§ 7121. Grievance procedures

(a) * * *

(b)(1) * * *

[(2)(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order—

[(i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

[(ii) the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

[(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.]

(2) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board.

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Subpart G—Insurance and Annuities

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CHAPTER 83—RETIREMENT

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

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§ 8341. Survivor annuities

(a) * * *

* * * * * * *

(e)(1) * * *

* * * * * * *

(4) If the annuity of a child under this subchapter terminates under paragraph (3)(E) because of marriage, then, if such marriage ends (whether by death of the spouse, divorce, or annulment), such annuity shall resume on the first day of the month in which the marriage ends, but only if—

(A) any lump sum paid is returned to the Fund; and

(B) that individual is not otherwise ineligible for such annuity.

* * * * * * *

§ 8351. Participation in the Thrift Savings Plan

(a) * * *

(b)(1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to employees and Members making contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) An employee or Member may contribute to the Thrift Savings Fund in any pay period any amount not exceeding [5 percent of] the amount of the employee's or Member's basic pay for such period.

* * * * * * *

(5)(A) * * *

(B) [An election, change of election, or modification (relating to the commencement date of a deferred annuity)] *An election or change of election* authorized by subchapter III of chapter 84 of this title shall be effective in the case of a married employee or Member, and a loan *or withdrawal* may be approved under section 8433(g) *and (h)* of this title in such case, only after the Executive Director notifies the employee's or Member's spouse that [the election, change of election, or modification] *the election or change of election* has been made or that the Executive Director has received an application for such loan *or withdrawal*, as the case may be.

(C) Subparagraph (B) may be waived with respect to a spouse if the employee or Member establishes to the satisfaction of the Executive Director of the Federal Retirement Thrift Investment Board that the whereabouts of such spouse cannot be determined.

(D) Except with respect to the making of loans *or withdrawals* under section 8433(g) *or (h)*, none of the provisions of this paragraph requiring notification to a spouse or former spouse or an employee, Member, former employee, or former Member shall apply in any case in which the nonforfeitable account balance of the employee, Member, former employee, or former Member is $3,500 or less.

* * * * * * *

(6) Notwithstanding paragraph (4), if an employee or Member separates from Government employment and such employee's or Member's nonforfeitable account balance is [$3,500 or less] *less than an amount that the Executive Director prescribes by regulation*, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment [unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b)].

* * * * * * *

CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
8401. Definitions.
* * * * * * *

SUBCHAPTER III—THRIFT SAVINGS PLAN

[8431. Definition.]

* * * * * * *

SUBCHAPTER I—GENERAL PROVISIONS

§ 8401. Definitions

For the purpose of this chapter—

(1) * * *

* * * * * * *

(4) [except as provided in subchapter III of this chapter,] the term "basic pay" has the meaning given such term by section 8331(3);

* * * * * * *

SUBCHAPTER III—THRIFT SAVINGS PLAN

[§ 8431. Definition

[Notwithstanding section 8401 of this title, for the purpose of this subchapter, the term "basic pay", when used with respect to an employee or Member, means the basic pay of the employee or Member established pursuant to law, without regard to any provision of law (except sections 5303(e), 5304(g), and 5382(b) of this title) limiting the rate of pay actually payable in any pay period (including any provision of law restricting the use of appropriated funds).]

§ 8432. Contributions

(a) An employee or Member may contribute to the Thrift Savings Fund in any pay period, pursuant to an election under subsection (b)[(1)], an amount not to exceed [10 percent of] such individual's basic pay for such period. [Contributions made under this subsection during any 6-month period for which an election period is provided under subsection (b)(1) shall be made each pay period during such 6-month period pursuant to a program of regular contributions provided in regulations prescribed by the Executive Director.] *Contributions under this subsection pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions provided in regulations prescribed by the Executive Director.*

(b)(1)(A) The Executive Director shall prescribe regulations under which employees and Members shall be afforded a reasonable period every 6 months to elect to make contributions under subsection (a), to modify the amount to be contributed under such subsection, or to terminate such contributions. An election to make such contributions shall remain in effect until modified or terminated.

(B) The amount to be contributed pursuant to an election under subparagraph (A) *(or any election allowable by virtue of paragraph*

(4)) shall be the percentage of basic pay or amount designated by the employee or Member.

* * * * * * *

(3) [Notwithstanding paragraph (2)(A), an] *An* employee or Member who elects to become subject to this chapter under section 301 of the Federal Employees' Retirement System Act of 1986 may make the first election for the purpose of subsection (a) during the period prescribed for such purpose by the Executive Director. The period prescribed by the Executive Director shall commence on the date on which the employee or Member makes the election to become subject to this chapter.

[(4)(A) Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director. The Executive Director shall prescribe an election period for such purpose which shall commence on April 1, 1987. An election by such an employee or Member during that election period shall be effective on the first day of the employee's or Member's first pay period which begins after the date on which the employee or Member makes that election.

[(B) Notwithstanding subsection (a), the maximum amount that an employee or Member may contribute during any pay period which begins on or after April 1, 1987, and before October 1, 1987, pursuant to an election made during the election period provided under subparagraph (A) is the amount equal to 15 percent of such individual's basic pay for such period.]

(4) The Executive Director shall prescribe such regulations as may be necessary to carry out the following:

(A) Notwithstanding subparagraph (A) of paragraph (2), an employee or Member described in such subparagraph shall be afforded a reasonable opportunity to first make an election under this subsection beginning on the date of commencing service or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.

(B) An employee or Member described in subparagraph (B) of paragraph (2) shall be afforded a reasonable opportunity to first make an election under this subsection (based on the appointment or election described in such subparagraph) beginning on the date of commencing service pursuant to such appointment or election or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.

(C) Notwithstanding the preceding provisions of this paragraph, contributions under paragraphs (1) and (2) of subsection (c) shall not be payable with respect to any pay period before the earliest pay period for which such contributions would otherwise be allowable under this subsection if this paragraph had not been enacted.

(D) Sections 8351(a)(2), 8440a(a)(2), 8440b(a)(2), 8440c(a)(2), and 8440d(a)(2) shall be applied in a manner consistent with

the purposes of subparagraphs (A) and (B), to the extent those subparagraphs can be applied with respect thereto.

(E) Nothing in this paragraph shall affect paragraph (3).

* * * * * * *

(i)(1) This subsection applies to any employee—

(A) to whom section 8432b applies; and

(B) who, during the period of such employee's absence from civilian service (as referred to in section 8432b(b)(2)(B))—

(i) is eligible to make an election described in subsection (b)(1); or

(ii) would be so eligible but for having **[**either elected to terminate individual contributions to the Thrift Savings Fund within 2 months before commencing military service or**]** separated in order to perform military service.

* * * * * * *

(j)(1) For the purpose of this subsection—

(A) the term "eligible rollover distribution" has the meaning given such term by section 402(c)(4) of the Internal Revenue Code of 1986; and

(B) the term "qualified trust" has the meaning given such term by section 402(c)(8) of the Internal Revenue Code of 1986.

(2) An employee or Member may contribute to the Thrift Savings Fund an eligible rollover distribution from a qualified trust. A contribution made under this subsection shall be made in the form described in section 401(a)(31) of the Internal Revenue Code of 1986. In the case of an eligible rollover distribution, the maximum amount transferred to the Thrift Savings Fund shall not exceed the amount which would otherwise have been included in the employee's or Member's gross income for Federal income tax purposes.

(3) The Executive Director shall prescribe regulations to carry out this subsection.

* * * * * * *

§ 8433. Benefits and election of benefits

(a) * * *

[(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect—

[(1) to receive an immediate annuity from the Thrift Savings Fund;

[(2) to defer the commencement of the payment of an annuity from the Thrift Savings Fund until such date as the employee or Member specifies, but not later than April 1 of the year following the year in which the employee or Member becomes 70½ years of age;

[(3) to withdraw the amount of the balance in the employee's or Member's account in the Thrift Savings Fund in one or more substantially equal payments to be made not less frequently than annually and to commence before April 1 of the year following the year in which the employee or Member becomes 70½ years of age; or

[(4) to transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (c).

[(c)(1) The Executive Director shall make each transfer elected under subsection (b)(4) directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

[(2) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (1) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.]

(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect to withdraw from the Thrift Savings Fund the balance of the employee's or Member's account as—

(1) an annuity;

(2) a single payment;

(3) 2 or more substantially equal payments to be made not less frequently than annually; or

(4) any combination of payments as provided under paragraphs (1) through (3) as the Executive Director may prescribe by regulation.

(c)(1) In addition to the right provided under subsection (b) to withdraw the balance of the account, an employee or Member who separates from Government service and who has not made a withdrawal under subsection (h)(1)(A) may make one withdrawal of any amount as a single payment in accordance with subsection (b)(2) from the employee's or Member's account.

(2) An employee or Member may request that the amount withdrawn from the Thrift Savings Fund in accordance with subsection (b)(2) be transferred to an eligible retirement plan.

(3) The Executive Director shall make each transfer elected under paragraph (2) directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

(4) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (2) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.

(d)(1) [Subject to paragraph (3)(A)] *Subject to paragraph (3)* and subsections (a) and (c) of section 8435 of this title, an employee or Member may change an election previously made under this subchapter.

[(2) Subject to paragraph (3)(B) and section 8435(c) of this title, a former employee or Member who has made an election pursuant to subsection (b)(2) may modify the date specified in such election or in a previous modification under this paragraph.]

[(3)(A)] *(2)* A former employee or Member may not change an election under this section on or after the date on which a payment is made in accordance with such election or, in the case of an elec-

tion to receive an annuity, the date on which an annuity contract is purchased to provide for the annuity elected by the former employee or Member.

[(B) A modification of a date may not be made under paragraph (2) on or after the date on which an annuity contract is purchased to provide for the annuity involved, and may not specify a date for the commencement of an annuity earlier than 90 days after the date on which the modification is submitted to the Executive Director (or such period shorter than 90 days as the Executive Director (or such period shorter than 90 days as the Executive Director may by regulation prescribe).]

* * * * * * *

(f)(1) Notwithstanding subsection (b), if an employee or Member separates from Government employment, and such employee's or Member's nonforfeitable account balance is [$3,500 or less] *less than an amount that the Executive Director prescribes by regulation*, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment [unless the employee or Member elects, as such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b), or], unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.

(2) Unless otherwise elected under this section, and subject to paragraph (1), benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on [February] *April* 1 of the year following the latest of the year in which—

(A) the employee, Member, former employee, or former Member becomes [65] *70½* years of age; *or*

[(B) occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member because subject to this subchapter; or]

[(C)] *(B)* the employee, Member, former employee, or former Member separates from Government employment.

(g)(1) At any time [after December 31, 1987, and] before separation, an employee or Member may apply to the Board for permission to borrow from the employee's or Member's account an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member under section 8432(a) of this title.

[(2) An application under this subsection may be approved only for—

[(A) the purchase of a primary residence;

[(B) educational expenses;

[(C) medical expenses; or

[(D) financial hardship.]

[(3)] *(2)* Loans under this subsection shall be available to all employees and Members on a reasonably equivalent basis, and shall be subject to such other conditions as the Board may by regulation prescribe. The restrictions of section 8477(c)(1) of this title shall not apply to loans made under this subsection.

[(4)] *(3)* A loan may not be made under this subsection to the extent that the loan would be treated as a taxable distribution under section 72(p) of the Internal Revenue Code of 1954.

[(5)] *(4)* A loan may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.

(5) An employee who has been furloughed due to a lapse in appropriations may not be denied a loan under this subsection solely because such employee is not in a pay status.

(h)(1) An employee or Member may apply, before separation, to the Board for permission to withdraw an amount from the employee's or Member's account based upon—

(A) the employee or Member having attained age 59½; or

(B) financial hardship.

(2) A withdrawal under paragraph (1)(A) shall be available to each eligible participant one time only.

(3) A withdrawal under paragraph (1)(B) shall be available only for an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member under section 8432(a) of this title.

(4) Withdrawals under paragraph (1) shall be subject to such other conditions as the Executive Director may prescribe by regulation.

(5) A withdrawal may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.

* * * * * * *

§ 8435. Protections for spouses and former spouses

(a)(1)(A) A married employee or Member (or former employee or Member) [may make an election under subsection (b)(3) or (b)(4) of section 8433 of this title or change an election previously made under subsection (b)(1) or (b)(2) of such section] *may withdraw all or part of a Thrift Savings Fund account under subsection (b) (2), (3), or (4) of section 8433 of this title or change a withdrawal election* only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B) that the loan would be treated as a taxable distribution under section 72(p) of the Internal Revenue Code of 1954. *A married employee or Member (or former employee or Member) may make a withdrawal from a Thrift Savings Fund account under subsection (c)(1) of section 8433 of this title only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).*

* * * * * * *

(c)(1) [An election, change of election, or modification of the commencement date of a deferred annuity] *An election or change of election* shall not be effective under this subchapter to the extent that the election, change, [modification, or transfer] *or transfer* conflicts with any court decree, order, or agreement described in paragraph (2).

(2) A court decree, order, or agreement referred to in paragraph (1) is, with respect to an employee or Member (or former employee or Member), a court decree of divorce, annulment, or legal separation issued in the case of such employee or Member (or former employee or Member) and any former spouse of the employee or Mem-

ber (or former employee or Member) or any court order or court-approved property settlement agreement incident to such decree if—

(A) the decree, order, or agreement expressly relates to any portion of the balance in the employee's or Member's (or former employee's or Member's) account; and

(B) notice of the decree, order, or agreement was received by the Executive Director before—

(i) the date on which payment is made, or

(ii) in the case of an annuity, the date on which an annuity contract is purchased to provide for the annuity,

in accordance with the election, change, [modification,] or contribution referred to in paragraph (1).

* * * * * * *

(e)(1)(A) A loan *or withdrawal* may be made to a married employee or Member under section 8433(g) *and (h)* of this title only if the employee's or Member's spouse consents to such loan *or withdrawal* in writing.

(B) A consent under subparagraph (A) shall be irrevocable with respect to the loan *or withdrawal* to which the consent relates.

(C) Subparagraph (A) shall not apply to a loan *or withdrawal* to an employee or Member who establishes to the satisfaction of the Executive Director (at the time the employee or Member applies for such loan *or withdrawal* and in accordance with regulations prescribed by the Executive Director)—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(2) An application for a loan *or withdrawal* under section 8433(g) *and (h)* of this title shall not be approved if approval would have the result described under subsection (c)(1).

* * * * * * *

(g) Except with respect to the making of loans *or withdrawals* under section 8433(g) *and (h)*, none of the provisions of this section requiring notification to, or the consent or waiver of, a spouse or former spouse of an employee, Member, former employees, or former Member shall apply in any case in which the nonforfeitable account balance of the employee, Member, former employee, or former Member is $3,500 or less.

* * * * * * *

§ 8438. Investment of Thrift Savings Fund

(a) For the purposes of this section—

(1) * * *

* * * * * * *

(5) the term "International Stock Index Investment Fund" means the International Stock Index Investment Fund established under subsection (b)(1)(E);

[(5)] *(6)* the term "net worth" means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves;

[(6)] *(7)* the term "plan" means an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));

[(7)] *(8)* the term "qualified professional asset manager" means—

(A) * * *

* * * * * * *

(D) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) if the investment adviser has, on the last day of its latest fiscal year ending before the date of a determination for the purpose of this subparagraph, total client assets under its management and control in excess of $50,000,000, and—

(i) the investment adviser has, on such day, shareholder's or partner's equity in excess of $750,000; or

(ii) payment of all of the investment adviser's liabilities, including any liabilities which may arise by reason of a breach or violation of a duty described in section 8477 of this title, is unconditionally guaranteed by—

(I) * * *

* * * * * * *

(III) a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) that has, on the last day of the broker's or dealer's latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $750,000; [and]

[(8)] *(9)* the term "shareholder's or partner's equity", as used in paragraph [(7)(D)] *(8)(D)* with respect to an investment adviser or a person (as defined in section 8471(4) of this title) who is affiliated with the investment adviser in a manner described in clause (ii)(I) of such paragraph [(7)(D)] *(8)(D)* , means the equity shown in the most recent balance sheet prepared for such investment adviser or affiliated person, in accordance with generally accepted accounting principles, within 2 years before the date on which the investment adviser's status as a qualified professional asset manager is determined for the purposes of this section[.]*; and*

(10) the term "Small Capitalization Stock Index Investment Fund" means the Small Capitalization Stock Index Investment Fund established under subsection (b)(1)(D).

(b)(1) The Board shall establish—

(A) * * *

(B) a Fixed Income Investment Fund under which sums in the Thrift Savings Fund are invested in—

(i) insurance contracts;

(ii) certificates of deposits; or

(iii) other instruments or obligations selected by qualified professional asset managers,

which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time; [and]

(C) a Common Stock Index Investment Fund as provided in paragraph (2)[.]*;*

(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3); and

(E) an International Stock Index Investment Fund as provided in paragraph (4).

* * * * * * *

(3)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets excluding the common stocks included in the Common Stock Index Investment Fund.

(B) The Small Capitalization Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Small Capitalization Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(4)(A) The Board shall select an index which is a commonly recognized index comprised of stock the aggregate market value of which is a reasonably complete representation of the international equity markets excluding the United States equity markets.

(B) The International Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the International Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

* * * * * * *

§ 8439. Accounting and information

(a)(1) The Executive Director shall establish and maintain an account for each individual *who makes contributions or* for whom contributions are made under [section 8432(c)(1)] *section 8432* of this title or who makes contributions to the Thrift Savings Fund under section 8351 of this title.

* * * * * * *

(c)(1) * * *

(2) Information under this subsection shall be provided at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title, and in a manner designed to facilitate informed decisionmaking with respect to elections under sections 8432 and 8438 of this title. *Nothing in this paragraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence.*

(d) [Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund or the Fixed Income Investment Fund described in paragraphs (1) and (3),] *Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund, the Fixed Income Investment Fund, the International Stock Index Investment Fund, or the Small Capitalization Stock Index Investment Fund, defined in paragraphs (1), (3), (5), and (10),* respectively, of section 8438(a) of this title shall sign an acknowledgement prescribed by the Executive Director which states that the employee, Member, former employee, or former Member understands that an investment in either such Fund is made at the employee's, Member's, former employee's, or former Member's risk, that the employee, Member, former employee, or former Member is not protected by the Government against any loss on such investment, and that a return on such investment is not guaranteed by the Government.

* * * * * * *

§ 8440a. Justices and judges

(a)(1) A justice or judge of the United States as defined by section 451 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund. Basic pay does not include an annuity or salary received by a justice or judge who has retired under section 371 (a) or (b) or section 372(a) of title 28, United States Code.

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals [subject to chapter 84 of this title: *Provided, however,* That a justice or judge may make the first such election within 60 days of the effective date of this section.] *subject to this chapter.*

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to justices and judges making contributions to the Thrift Savings Fund.

[(2) The amount contributed by a justice or judge shall not exceed 5 percent of basic pay.]

[(3)] *(2)* No contributions shall be made for the benefit of a justice or judge under section 8432(c) of this title.

[(4)] *(3)* Section 8433(b) of this title applies with respect to elections available to any justice or judge who retires under section 371 (a) or (b) or section 372(a) of title 28. Retirement under section 371 (a) or (b) or section 372(a) of title 28 is a separation from service for the purposes of subchapters III and VII or chapter 84 of this title.

[(5)] *(4)* Section 8433(b) of this title applies to any justice or judge who resigns without having met the age and service requirements set forth in section 371(c) of title 28.

[(6)] *(5)* The provisions of section 8351(b)(5) of this title shall govern the rights of spouses of justices or judges contributing to the Thrift Savings Fund under this section.

[(7)] *(6)* Notwithstanding paragraphs [(4) and (5)] *(3) and (4)*, if any justice or judge retires under subsection (a) or (b) of section

371 or section 372(a) of title 28, or resigns without having met the age and service requirements set forth under section 371(c) of title 28, and such justice's or judge's nonforfeitable account balance is [$3,500 or less] *less than an amount that the Executive Director prescribes by regulation*, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment [unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)].

§ 8440b. Bankruptcy judges and magistrates

(a) * * *

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to bankruptcy judges and magistrates who make contributions to the Thrift Savings Fund under subsection (a) of this section.

[(2) The amount contributed by a bankruptcy judge or magistrate for any pay period shall not exceed 5 percent of basic pay for such pay period.]

[(3)] *(2)* No contributions shall be made under section 8432(c) of this title for the benefit of a bankruptcy judge or magistrate making contributions under subsection (a) of this section.

[(4)] *(3)*(A) Section 8433(b) of this title applies to a bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an immediate annuity under section 377 of title 28 (including a disability annuity under subsection (d) of such section) or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(B) Section 8433(b) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(C) Section 8433(b) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

[(5)] *(4)* With respect to bankruptcy judges and magistrates to whom this section applies, any of the actions described under [paragraph (4)(A), (B), or (C)] *paragraph (3)(A), (B), or (C)* shall be considered a separation from service for purposes of this subchapter and subchapter VII.

[(6)] *(5)* For purposes of this section, the terms "retirement" and "retire" include removal from office under section 377(d) of title 28 on the sole ground of mental or physical disability.

[(7)] *(6)* In the case of a bankruptcy judge or magistrate who receives a distribution from the Thrift Savings Plan and who later

receives an annuity under section 377 of title 28, that annuity shall be offset by an amount equal to the amount *of the distribution* which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

[(8) Notwithstanding paragraph (4),**]** *(7) Notwithstanding paragraph (3),* if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b) of section 8433, and such bankruptcy judge's or magistrate's nonforfeitable account balance is **[**$3,500 or less**]** *less than an amount that the Executive Director prescribes by regulation*, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment **[**unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under such subsection (b)**]**.

§ 8440c. Claims Court judges

(a) * * *

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to Claims Court judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

[(2) The amount contributed by a Claims Court judge for any pay period shall not exceed 5 percent of basic pay for such pay period.**]**

[(3)**]** *(2)* No contributions shall be made under section 8432(c) of this title for the benefit of a Claims Court judge making contributions under subsection (a) of this section.

[(4)**]** *(3)*(A) Section 8433(b) of this title applies to a Claims court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an annuity under section 178 of title 28 (including a disability annuity under subsection (c) of such section).

(B) Section 8433(b) of this title applies to any Claims Court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an annuity under section 178 of title 28.

[(5)**]** *(4)* With respect to Claims Court judges to whom this section applies, any of the actions described in **[**paragraph (4) (A) or (B)**]** *paragraph (3)(A) or (B)* shall be considered a separation from service for purposes of this subchapter and subchapter VII.

[(6)**]** *(5)* For purposes of this section, the terms "retirement" and "retire" include removal from office under section 178(c) of title 28 on the sole ground of mental or physical disability.

[(7)**]** *(6)* In the case of a Claims Court judge who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 178 of title 28, such annuity shall be offset by an amount equal to the amount *of the distribution* which represents the Governments contribution to that person's Thrift Savings Account, without regard to earning attributable to that

amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

[(8) Notwithstanding paragraph (4),] *(7) Notwithstanding paragraph (3),* if any Claims Court judge retires under circumstances making such judge eligible to make an election under section 8433(b), and such judge's nonforfeitable account balance is [$3,500 or less] *less than an amount that the Executive Director prescribes by regulation*, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment [unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)].

§ 8440d. Judges of the United States Court of Veterans Appeals

(a)(1) * * *

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) of this title for individuals [subject to chapter 84 of this title.] *subject to this chapter.*

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII of this chapter shall apply with respect to a judge making contributions to the Thrift Savings Fund.

[(2) The amount contributed by a judge may not exceed 5 percent of the amount of the judge's basic pay. Basic pay does not include any retired pay paid pursuant to section 7296 of title 38.]

(2) For purposes of contributions made to the Thrift Savings Fund, basic pay does not include any retired pay paid pursuant to section 7296 of title 38.

* * * * * * *

SUBCHAPTER IV—SURVIVOR ANNUITIES

* * * * * * *

§ 8443. Rights of a child

(a) * * *

(b) The annuity of a child under this subchapter—

(1) * * *

* * * * * * *

This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless then such a student;

(C) becomes 22 years of age if then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless then incapable of self-support; or

(E) dies or marries;

whichever occurs first. On the death of the surviving wife or husband, or former wife or husband, or termination of the annuity of

a child, the annuity of any other child or children shall be recomputed and paid as though the wife or husband, former wife or husband, or child had not survived the annuitant, employee, or Member. *If the annuity of a child under this subchapter terminates under subparagraph (E) because of marriage, then, if such marriage ends (whether by death of the spouse, divorce, or annulment), such annuity shall resume on the first day of the month in which the marriage ends, but only if any lump sum paid is returned to the Fund, and that individual is not otherwise ineligible for such annuity.*

* * * * * * *

CHAPTER 87—LIFE INSURANCE

* * * * * * *

§ 8705. Death claims; order of precedence; escheat

[(a) The**]** *(a) Except as provided in subsection (e), the* amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other next of kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

* * * * * * *

(e)(1) Any amount which would otherwise be paid to a person determined under the order of precedence named by subsection (a) shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation.

(2) For purposes of this subsection, a decree, order, or agreement referred to in paragraph (1) shall not be effective unless it is received, before the date of the covered employee's death, by the em-

ploying agency or, if the employee has separated from service, by the Office.

(3) A designation under this subsection with respect to any person may not be changed except—

(A) with the written consent of such person, if received as described in paragraph (2); or

(B) by modification of the decree, order, or agreement, as the case may be, if received as described in paragraph (2).

(4) The Office shall prescribe any regulations necessary to carry out this subsection, including regulations for the application of this subsection in the event that 2 or more decrees, orders, or agreements, are received with respect to the same amount.

§ 8706. Termination of insurance; assignment of ownership

(a) * * *

* * * * * * *

(e)*(1)* Under regulations prescribed by the Office, each policy purchased under this chapter shall provide that an insured employee or former employee may make an irrevocable assignment of the employee's or former employee's incidents of ownership in the policy.

(2) A court decree of divorce, annulment, or legal separation, or the terms of a court-approved property settlement agreement incidental to any court decree of divorce, annulment, or legal separation, may direct that an insured employee or former employee make an irrevocable assignment of the employee's or former employee's incidents of ownership in insurance under this chapter (if there is no previous assignment) to the person specified in the court order or court-approved property settlement agreement.

* * * * * * *

(g)(1) Notwithstanding subsections (a) and (b) of this section, an employee whose coverage under this chapter would otherwise terminate due to a separation described in paragraph (3) shall be eligible to continue basic insurance coverage described in section 8704 in accordance with this subsection and regulations the Office may prescribe, if the employee arranges to pay currently into the Employees Life Insurance Fund, through the former employing agency or, if an annuitant, through the responsible retirement system, an amount equal to the sum of—

(A) both employee and agency contributions which would be payable if separation had not occurred; plus

(B) an amount, determined under regulations prescribed by the Office, to cover necessary administrative expenses, but not to exceed 2 percent of the total amount under subparagraph (A).

(2) Continued coverage under this subsection may not extend beyond the date which is 18 months after the effective date of the separation which entitles a former employee to coverage under this subsection. Termination of continued coverage under this subsection shall be subject to provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance as provided by subsection (a). If an eligible employee does not make an election for purposes of this subsection, the employee's insurance will terminate as provided by subsection (a).

(3)(A) This subsection shall apply to an employee who, on or after the date of enactment of this subsection and before the applicable date under subparagraph (B)—

(i) is involuntarily separated from a position due to a reduction in force, or separates voluntarily from a position the employing agency determines is a "surplus position" as defined by section 8905(d)(4)(C); and

(ii) is insured for basic insurance under this chapter on the date of separation.

(B) The applicable date under this subparagraph is October 1, 2001, except that, for purposes of any involuntary separation referred to in subparagraph (A) with respect to which appropriate specific notice is afforded to the affected employee before October 1, 2001, the applicable date under this subparagraph is February 1, 2002.

* * * * * * *

§ 8714b. Additional optional life insurance

(a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(3)(A) The amount of additional optional insurance continued under paragraph (2) shall be continued, without any reduction under the last two sentences thereof, if—

(i) at the time of retirement, there is in effect a designation under section 8705 under which the entire amount of such insurance would be paid to an individual who is permanently disabled; and

(ii) an election under subsection (d)(3) on behalf of such individual is made in timely fashion.

(B) Notwithstanding subparagraph (A), any reduction required under paragraph (2) shall be made if—

(i) the additional optional insurance is not in fact paid in accordance with the designation under section 8705, as in effect at the time of retirement;

(ii) the Office finds that adequate arrangements have not been made to ensure that the insurance provided under this section will be used only for the care and support of the individual so designated; or

(iii) the election referred to in subparagraph (A)(ii) terminates at any time before the death of the individual who made such election.

(C) For purposes of this paragraph, the term "permanently disabled" shall have the meaning given such term under regulations which the Office shall prescribe based on subparagraphs (A) and (C) of section 1614(a)(3) of the Social Security Act, except that, in applying subparagraph (A) of such section for purposes of this subparagraph, "which can be expected to last permanently" shall be substituted for "which has lasted or can be expected to last for a continuous period of not less than twelve months".

(d)(1) * * *

* * * * * * *

(3)(A) To be eligible for unreduced additional optional insurance under subsection (c)(3), the insured individual shall be required to elect, at such time and in such manner as the Office by regulation requires (including procedures for demonstrating compliance with the requirements of subsection (c)(3)), to have the full cost thereof continue to be withheld from the former employee's annuity or compensation, as the case may be, beginning as of when such withholdings would otherwise cease under the second sentence of paragraph (1).

(B) An election made by an insured individual under subparagraph (A) (and withholdings pursuant thereto) shall terminate in the event that—

(i) the insured individual—

(I) revokes such election; or

(II) makes any redesignation or other change in the designation under section 8705 (as in effect at the time of retirement); or

(ii) the Office finds, upon the application of the insured individual or on its own initiative, that any of the requirements or conditions for unreduced additional optional insurance under subsection (c)(3) are, at any time, no longer met.

* * * * * * *

CHAPTER 89—HEALTH INSURANCE

* * * * * * *

§ 8901. Definitions

For the purpose of this chapter—

(1) * * *

* * * * * * *

(7) "carrier" means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee [organization;] *organization and the Government-wide service benefit plan sponsored by an association of organizations described in this paragraph;*

* * * * * * *

§ 8902. Contracting authority

(a) * * *

* * * * * * *

[(m)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt

any State or local law, or any regulation issued thereunder, which relates to health insurance or plans to the extent that such law or regulation is inconsistent with such contractual provisions.]

(m)(1) The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans.

* * * * * * *

§ 8902a. Debarment and other sanctions

(a)(1) * * *

(2)(A) Notwithstanding section 8902(j) or any other provision of this chapter, if, under [subsection (b) or (c)] *subsection (b), (c), or (d)*, a provider is barred from participating in the program under this chapter, no payment may be made by a carrier pursuant to any contract under this chapter (either to such provider or by reimbursement) for any service or supply furnished by such provider during the period of the debarment.

* * * * * * *

(b) The Office of Personnel Management [may] *shall* bar the following providers of health care services or supplies from participating in the program under this chapter:

(1) * * *

* * * * * * *

[(5) Any provider—

[(A) whose license to provide health care services or supplies has been revoked, suspended, restricted, or not renewed, by a State licensing authority for reasons relating to the provider's professional competence, professional performance, or financial integrity; or

[(B) that surrendered such a license while a formal disciplinary proceeding was pending before such an authority, if the proceeding concerned the provider's professional competence, professional performance, or financial integrity.]

(5) Any provider that is currently suspended or excluded from participation under any program of the Federal Government involving procurement or nonprocurement activities.

(c) The Office may bar the following providers of health care services from participating in the program under this chapter:

(1) Any provider—

(A) whose license to provide health care services or supplies has been revoked, suspended, restricted, or not renewed, by a State licensing authority for reasons relating to the provider's professional competence, professional performance, or financial integrity; or

(B) that surrendered such a license while a formal disciplinary proceeding was pending before such an authority, if the proceeding concerned the provider's professional competence, professional performance, or financial integrity.

(2) Any provider that is an entity directly or indirectly owned, or with a 5 percent or more controlling interest, by an individual who is convicted of any offense described in subsection (b), against whom a civil monetary penalty has been assessed under subsection (d), or who has been excluded from participation under this chapter.

(3) Any provider that the Office determines, in connection with claims presented under this chapter, has charged for health care services or supplies in an amount substantially in excess of such provider's customary charges for such services or supplies (unless the Office finds there is good cause for such charge), or charged for health care services or supplies which are substantially in excess of the needs of the covered individual or which are of a quality that fails to meet professionally recognized standards for such services or supplies.

(4) Any provider that the Office determines has committed acts described in subsection (d).

[(c)] *(d)* Whenever the Office determines—

[(1) in connection with a claim presented under this chapter, that a provider of health care services or supplies—

[(A) has charged for health care services or supplies that the provider knows or should have known were not provided as claimed; or

[(B) has charged for health care services or supplies in an amount substantially in excess of such provider's customary charges for such services or supplies, or charged for health care services or supplies which are substantially in excess of the needs of the covered individual or which are of a quality that fails to meet professionally recognized standards for such services or supplies;]

(1) in connection with claims presented under this chapter, that a provider has charged for a health care service or supply which the provider knows or should have known involves—

(A) an item or service not provided as claimed;

(B) charges in violation of applicable charge limitations under section 8904(b); or

(C) an item or service furnished during a period in which the provider was excluded from participation under this chapter pursuant to a determination by the Office under this section, other than as permitted under subsection (g)(2)(B);

(2) that a provider of health care services or supplies has knowingly made, or caused to be made, any false statement or misrepresentation of a material fact which is reflected in a claim presented under this chapter; or

(3) that a provider of health care services or supplies has knowingly failed to provide any information required by a carrier or by the Office to determine whether a payment or reimbursement is payable under this chapter or the amount of any such payment or reimbursement;

the Office may, in addition to any other penalties that may be prescribed by law, and after consultation with the Attorney General, impose a civil monetary penalty of not more than $10,000 for any item or service involved. In addition, such a provider shall be sub-

ject to an assessment of not more than twice the amount claimed for each such item or service. In addition, the Office may make a determination in the same proceeding to bar such provider from participating in the program under this chapter.

[(d)] *(e)* The Office—

(1) may not initiate any debarment proceeding against a provider, based on such provider's having been convicted of a criminal offense, later than 6 years after the date on which such provider is so convicted; and

(2) may not initiate any action relating to a civil penalty, assessment, or debarment under this section, in connection with any claim, later than 6 years after the date the claim is presented, as determined under regulations prescribed by the Office.

[(e)] *(f)* In making a determination relating to the appropriateness of imposing or the period of any debarment under this section *(where such debarment is not mandatory)*, or the appropriateness of imposing or the amount of any civil penalty or assessment under this section, the Office shall take into account—

(1) the nature of any claims involved and the circumstances under which they were presented;

(2) the degree of culpability, history of prior offenses or improper conduct of the provider involved; and

(3) such other matters as justice may require.

[(f)(1) The debarment of a provider under subsection (b) or (c) shall be effective at such time and upon such reasonable notice to such provider, and to carriers and covered individuals, as may be specified in regulations prescribed by the Office.]

(g)(1)(A) Except as provided in subparagraph (B), debarment of a provider under subsection (b) or (c) shall be effective at such time and upon such reasonable notice to such provider, and to carriers and covered individuals, as shall be specified in regulations prescribed by the Office. Any such provider that is excluded from participation may request a hearing in accordance with subsection (h)(1).

(B) Unless the Office determines that the health or safety of individuals receiving health care services warrants an earlier effective date, the Office shall not make a determination adverse to a provider under subsection (c)(4) or (d) until such provider has been given reasonable notice and an opportunity for the determination to be made after a hearing as provided in accordance with subsection (h)(1).

(2)(A) Except as provided in subparagraph (B), a debarment shall be effective with respect to any health care services or supplies furnished by a provider on or after the effective date of such provider's debarment.

(B) A debarment shall not apply with respect to inpatient institutional services furnished to an individual who was admitted to the institution before the date the debarment would otherwise become effective until the passage of 30 days after such date, unless the Office determines that the health or safety of the individual receiving those services warrants that a shorter period, or that no such period, be afforded.

(3) Any notice *of debarment* referred to in paragraph (1) shall specify the date as of which debarment becomes effective and the minimum period of time for which such debarment is to remain effective. *In the case of a debarment under paragraphs (1) through (4) of subsection (b), the minimum period of exclusion shall not be less than 3 years, except as provided in paragraph (4)(B)(ii).*

(4)(A) A provider barred from participating in the program under this chapter may, after the expiration of the minimum period of debarment referred to in paragraph (3), apply to the Office, in such manner as the Office may by regulation prescribe, for termination of the debarment.

(B) The Office may—

(i) terminate the debarment of a provider, pursuant to an application filed by such provider after the end of the minimum debarment period, if the Office determines, based on the conduct of the applicant, that—

(I) there is no basis under [subsection (b) or (c)] *subsection (b), (c), or (d)* for continuing the debarment; and

(II) there are reasonable assurances that the types of actions which formed the basis for the original debarment have not recurred and will not recur; or

* * * * * * *

[(g)(1) The Office may not make a determination under subsection (b) or (c) adverse to a provider of health care services or supplies until such provider has been given written notice and an opportunity for a hearing on the record. A provider is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the provider in any such hearing.

[(2) Notwithstanding section 8912, any person adversely affected by a final decision under paragraph (1) may obtain review of such decision in the United States Court of Appeals for the Federal Circuit. A written petition requesting that the decision be modified or set aside must be filed within 60 days after the date on which such person is notified of such decision.]

(h)(1) Any provider of health care services or supplies that is the subject of an adverse determination by the Office under this section shall be entitled to reasonable notice and an opportunity to request a hearing of record, and to judicial review as provided in this subsection after the Office renders a final decision. The Office shall grant a request for a hearing upon a showing that due process rights have not previously been afforded with respect to any finding of fact which is relied upon as a cause for an adverse determination under this section. Such hearing shall be conducted without regard to subchapter II of chapter 5 and chapter 7 of this title by a hearing officer who shall be designated by the Director of the Office and who shall not otherwise have been involved in the adverse determination being appealed. A request for a hearing under this subsection must be filed within such period and in accordance with such procedures as the Office shall prescribe by regulation.

(2) Any provider adversely affected by a final decision under paragraph (1) made after a hearing to which such provider was a party may seek review of such decision in the United States District Court for the District of Columbia or for the district in which the plaintiff resides or has his principal place of business by filing a no-

tice of appeal in such court within 60 days from the date the decision is issued and simultaneously sending copies of such notice by certified mail to the Director of the Office and to the Attorney General. In answer to the appeal, the Director of the Office shall promptly file in such court a certified copy of the transcript of the record, if the Office conducted a hearing, and other evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and evidence of record, a judgment affirming, modifying, or setting aside, in whole or in part, the decision of the Office, with or without remanding the cause for a rehearing. The district court shall not set aside or remand the decision of the Office unless there is not substantial evidence on the record, taken as a whole, to support the findings by the Office of a cause for action under this section or unless action taken by the Office constitutes an abuse of discretion.

(3) Matters that were raised or that could have been raised in a hearing under paragraph (1) or an appeal under paragraph (2) may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

[(h)**]** *(i)* A civil action to recover civil monetary penalties or assessments under **[**subsection (c)**]** *subsection (d)* shall be brought by the Attorney General in the name of the United States, and may be brought in the United States district court for the district where the claim involved was presented or where the person subject to the penalty resides. Amounts recovered under this section shall be paid to the Office for deposit into the Employees Health Benefits Fund. *The amount of a penalty or assessment as finally determined by the Office, or other amount the Office may agree to in compromise, may be deducted from any sum then or later owing by the United States to the party against whom the penalty or assessment has been levied.*

[(i)**]** *(j)* The Office shall prescribe regulations under which, with respect to services or supplies furnished by a debarred provider to a covered individual during the period of such provider's debarment, payment or reimbursement under this chapter may be made, notwithstanding the fact of such debarment, if such individual did not know or could not reasonably be expected to have known of the debarment. In any such instance, the carrier involved shall take appropriate measures to ensure that the individual is informed of the debarment and the minimum period of time remaining under the terms of the debarment.

§ 8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) SERVICE BENEFIT PLAN.—One Government-wide **[**plan,**]** *plan, underwritten by participating affiliates licensed in any number of States,* offering two levels of benefits, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees, annuitants, members of their families, former spouses, or persons having continued coverage under section 8905a of

this title, or, under certain conditions, payment is made by a carrier to the employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title.

* * * * * * *

§ 8905. Election of coverage

(a) An employee may enroll in an approved health benefits plan described by section 8903 or 8903a of this title either as an individual or for self and family.

(b) **[**An**]** *Subject to subsection (g), an* annuitant who at the time he becomes an annuitant was enrolled in a health benefits plan under this chapter—(1) * * *

* * * * * * *

(g)(1) The Office shall waive the requirements for continued enrollment under subsection (b) in the case of any individual who, on or after the date of the enactment of this subsection and before the applicable date under paragraph (2)—

(A) is involuntarily separated from a position, or voluntarily separated from a surplus position, in or under an Executive agency due to a reduction in force,

(B) based on the separation referred to in subparagraph (A), retires on an immediate annuity under subchapter III of chapter 83 or subchapter II of chapter 84, and

(C) is enrolled in a health benefits plan under this chapter as an employee immediately before retirement.

(2) The applicable date under this paragraph is October 1, 2001, except that, for purposes of any involuntary separation referred to in paragraph (1)(A) with respect to which appropriate specific notice is afforded to the affected employee before October 1, 2001, the applicable date under this paragraph is February 1, 2002.

(3) For purposes of this subsection, the term "surplus position", with respect to an agency, means any position determined in accordance with regulations under section 8905a(d)(4)(C) for such agency.

§ 8905a. Continued coverage

(a) * * *

* * * * * * *

(d)(1) * * *

* * * * * * *

(4)(A) If the basis for continued coverage under this section is an involuntary separation from a position, or a voluntary separation from a surplus position, in or under **[**the Department of Defense**]** *an Executive agency* due to a reduction in force—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

* * * * * * *

[(C) For the purpose of this paragraph, "surplus position" means a position which is identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures.]

(C) For purposes of this paragraph, the term "surplus position" means a position that, as determined under regulations prescribed by the head of the agency involved, is identified during planning for a reduction in force as being no longer required and is designated for elimination during the reduction in force.

* * * * * * *

§ 8908. Coverage of restored employees and survivor or disability annuitants

(a) * * *

* * * * * * *

(d) An individual—

(1) whose survivor annuity under section 8341(e) is terminated, and then later restored under paragraph (4) thereof, or

(2) whose survivor annuity under section 8443(b) is terminated, and then later restored under the last sentence thereof, may, under regulations prescribed by the Office, enroll in a health benefits plan described by section 8903 or 8903a if such individual was covered by any such plan immediately before such annuity so terminated.

* * * * * * *

SECTION 616 OF THE TREASURY, POSTAL SERVICE, AND GENERAL GOVERMENT APPROPRIATIONS ACT, 1996

SEC. 616. (a) * * *

* * * * * * *

(f) For the purpose of administering any provision of law (including [section 8431 of title 5, United States Code, and] any rule or regulation that provides premium pay, retirement, life insurance, or any other employee benefit) that requires any deduction or contribution, or that imposes any requirement or limitation on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

* * * * * * *

SECTION 7 OF THE FEDERAL FIRE PREVENTION AND CONTROL ACT OF 1974

NATIONAL ACADEMY FOR FIRE PREVENTION AND CONTROL

SEC. 7. (a) * * *

* * * * * * *

(c) POWERS OF SUPERINTENDENT.—The Superintendent is authorized to—

(1) * * *

* * * * * * *

[(4) appoint faculty members and consultants without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and, with respect to temporary and intermittent services, to make appointments to the same extent as is authorized by section 3109 of title 5, United States Code;]

(4) appoint faculty members to competitive service positions and with respect to temporary and intermittent services, to make appointments of consultants to the same extent as is authorized by section 3109 of title 5, United States Code;

* * * * * * *

SECTION 3110 OF THE OMNIBUS CONSOLIDATED RESCISSIONS AND APPROPRIATIONS ACT OF 1996

SEC. 3110. EMPLOYEE PROTECTIONS.

(a) * * *

(b) FORMER FEDERAL EMPLOYEES.—(1) * * *

* * * * * * *

[(3) The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required by section 8432 of title 5, United States Code, for those employees who elect to retain their coverage under FERS pursuant to paragraph (1).]

(3) The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required by sections 8432 and 8351 of title 5, United States Code, for those employees who elect to retain their coverage under the Civil Service Retirement System or the Federal Employees' Retirement System pursuant to paragraph (1).

* * * * * * *

X. COMMITTEE RECOMMENDATION

On July 25, 1996, a quorum being present, the Committee ordered the bill favorably reported.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT—104TH CONGRESS—ROLLCALL

Date: July 25, 1996.
Final Passage of H.R. 3841, as amended.
Offered by: Hon. John L. Mica (R-FL).
Voice vote: yea.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104–1; SECTION 102(b)(3)

H.R. 3841 is inapplicable to the legislative branch because it does not relate to any terms or conditions of employment or access to public services or accommodations.

ADDITIONAL VIEWS

I am concerned that we are moving too quickly on complicated and controversial legislation that affects two million Federal workers throughout the nation—not just in Washington. For example, in Dade County there are more than 11,000 Federal employees.

The Republican majority decided to move this bill quickly. The Subcommittee on Civil Service held a legislative hearing on July 16 on a July 11 discussion draft. The next day H.R. 3841 was introduced, and it was approved by the Subcommittee on July 18. On the morning of July 25 the Committee approved an 87 page amendment in the nature of a substitute that had been prepared at 8:50 p.m. the previous day.

This great speed might be all right if there were a consensus on all the contents of the bill. But in fact one section of the bill as reported by the subcommittee—section 201—is opposed by many interested parties because of the changes it makes in who will be fired when a Federal agency must cut the number of its employees.

Under current regulations, Federal workers who are in an agency that is shrinking are retained based on four factors: length of service, tenure, veterans' preference and performance. The current regulations have a formula for taking these four factors into account for each worker.

Section 201 modifies this formula and then freezes the new procedures into a statute.

The Office of Personnel Management ("OPM") testified at the July 16 hearing that it was "very concerned" about section 201. OPM said that putting the layoff procedures into a statute "would seriously diminish the current flexibilities of the governmentwide performance management system * * * Essentially depriving OPM of the ability to regulate in this area runs counter to the subcommittees's stated goal of making human resources management systems more flexible."

On July 24 the Federal Managers Association ("FMA") urged the Committee to drop section 201 from the bill. FMA said that "performance appraisers at downsizing agencies today are at times improperly motivated to use performance ratings to protect favorite employees from RIFs. These favorites are not necessarily the ones who are the highest performers."

The American Federation of Government Employees ("AFGE") urged that section 201 be deleted from the bill and said that "AFGE will oppose the bill if such a deletion does not occur." The union said that section 201 "would codify a system that arbitrarily and unfairly impacts upon outstanding workers who find themselves under a pass-fail system certainly through no fault of their own or their exclusive representative."

The amendments to section 201 approved by the Committee on July 25 are improvements. But they do not cure the fundamental

flaw of section 201: it codifies a firing process for the entire Federal government that is better left to the flexibility of regulations.

I believe in performance evaluations of employees. But all this opposition to section 201 indicates that this very complex portion of this bill is being moved too quickly.

CARRIE P. MEEK.

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